

No. 12050

United States
Court of Appeals

for the Ninth Circuit

THE DE LA RAMA STEAMSHIP CO., INC.,
a corporation,

Appellant,

vs.

H. H. PIERSON,

Appellee.

Transcript of Record

Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

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P. P. O'BRIEN,

No. 12050

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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San Francisco, California.

Attorney for Plaintiff and Appellee.

In the Superior Court of the State of California,
in and for the City and County of San Francisco

No. 360600

H. H. PIERSON,

Plaintiff,

vs.

DE LA RAMA STEAMSHIP CO., INC., a corporation,
FIRST DOE, SECOND DOE,
THIRD DOE,

Defendants.

COMPLAINT ON CONTRACT

Plaintiff complains of defendants, and for a cause of action alleges:

I.

That at all times mentioned herein, plaintiff was and is an alien corporation, organized and incorporated under the laws of the Philippine Republic, and engaged in a general maritime shipping business in the State of California and elsewhere, and having offices in the City and County of San Francisco, State of California.

II.

That at all times mentioned herein, plaintiff was employed by the defendant, as its Pacific Coast Manager at its San Francisco office, under the terms of a verbal contract of employment, made and to be performed in the City and County [1*] of San Francisco, State of California, and that all

* Page numbering appearing at foot of page of original certified Transcript of Record.

the transactions related hereinafter occurred in the City and County of San Francisco, State of California.

III.

That during the month of February in the year 1944 the exact day of the month being not known to the plaintiff at this date, plaintiff stated as follows to Mr. R. F. Suewer, Vice President of the said defendant corporation, who at all times herein mentioned was acting as the agent and employee of said defendant corporation within the course and scope of his said employment: that the salary paid by defendant to plaintiff for his services performed, and to be performed, was insufficient and inadequate, and less than the reasonable value of his said services and less than salaries paid to other persons holding comparable positions and performing comparable duties in other similar steamship companies; that by reason of the insufficiency and inadequacy of said salary, he, plaintiff, was unable and unwilling to continue his employment with said defendant as its Pacific Coast Manager, and would therefore resign from said employment. At said time and place the said Mr. R. F. Suewer, acting for and on behalf of said defendant as hereinbefore set forth, verbally promised plaintiff and agreed with him that if he, plaintiff, would not resign his said position, and would continue in his said employment and in the performance of his duties as hereinbefore described, until the termination of actual combatant warfare of the United States, then in progress, defendant

would, within a reasonable time of the termination of such actual warfare, pay plaintiff a bonus, or sum of money, which together with the salary received by him from December 7, 1941 to the date of the termination of said actual combatant warfare would equal the salary and bonuses paid to [2] other persons holding comparable positions and performing comparable duties in similar steamship companies.

IV.

That plaintiff believed the promises and representations and agreements made by defendant, by and through its agent and employee, the said Mr. R. F. Suerer, and relied upon the same, and in reliance thereon, plaintiff did not resign his position with said defendant, and did continue in his position as Pacific Coast Manager for defendant, and performed his duties in conformance therewith, constantly and until August 31, 1946, which said date was after the date upon which actual warfare of the United States ceased.

V.

That during the period from December 7, 1941 to October 1, 1943, plaintiff was paid a salary by defendant at the rate of \$600.00 per month; during the period from October 1, 1943 to August 14, 1943, plaintiff was paid a salary at the rate of \$708.33 per month; that the total salary paid by defendant to plaintiff from December 7, 1941 to August 14, 1945 was the sum of \$28,967.66; that during said period, persons holding comparable positions and performing comparable duties in

competing steamship companies were paid and received salaries at the rate of \$1000.00 per month, or a total salary for said period from December 7, 1941 to August 14, 1945 of \$44,226.12; that the difference between the amount actually paid to plaintiff by defendant, and the amount promised to him as hereinabove alleged, was and is the sum of \$15,258.56, no part of which has been paid, save and except the sum of \$2500.00. There is now due, owing and unpaid by defendant to plaintiff, the sum of \$12,758.56 for which demand has been made by plaintiff upon defendant. [3]

VI.

That actual combatant warfare of the United States in World War II ended and ceased upon August 14, 1945; that a reasonable time has elapsed since said date to the date of this complaint for payment of said additional sums due plaintiff by defendant.

As and for a second cause of action plaintiff alleges:

I.

Plaintiff incorporates herein by reference, as though set forth in complete detail, the allegations contained in his first cause of action.

II.

That by reason of the matters herein alleged, defendant became indebted to plaintiff in the sum of \$44,226.12, which sum is the reasonable value of plaintiff's services rendered to defendant for the period December 7, 1941 to August 14, 1945. That no part of said sum has been paid except the

sum of \$31,467.66 although demand has been made therefor, and defendant fails and refuses to pay; and defendant corporation is indebted to plaintiff in the sum of \$12,758.56 by reason thereof.

Wherefore, plaintiff prays judgment for the sum of \$12,758.56, together with interest thereon as allowed by law and his costs of suit, and for such other and further relief as the court shall deem just and proper in the premises.

ROBERT G. PARTRIDGE,
LEO M. COOK,

Attorneys for Plaintiff. [4]

(Duly Verified.)

[Endorsed]: Filed Dec. 18, 1946. [5]



[Title of Superior Court and Cause.]

PETITION FOR REMOVAL TO THE
UNITED STATES DISTRICT COURT

To the Honorable the Superior Court of the State
of California in and for the City and County
of San Francisco:

The petition of The De La Rama Steamship Co., Inc., a corporation sued herein as De La Rama Steamship Co., Inc., especially appearing for the sole and single purpose of presenting this petition, and for no other purpose, respectfully shows; your petitioner is one of the parties named as defendant in the above-entitled action, and is the sole and

only party named as defendant upon whom summons or process has been served. [6]

H. H. Pierson is the sole and only plaintiff herein. Said action has been commenced by the above-named plaintiff in the above-named Court by the filing of a complaint in said Court. On December 23, 1946 a summons was served on your petitioner in the City and County of San Francisco, State of California.

The time for your petitioner to answer or plead to the complaint in said action has not yet expired, and will not expire until the second day of January, 1947, and your petitioner has not yet filed any pleading, or in any way appeared in said action.

Said action is an action at law of a civil nature, and the matter in dispute in said action exceeds the sum of three thousand dollars (\$3,000), exclusive of interest and costs.

Your petitioner was at the time of the commencement of the action, ever since has been, and still is a resident of and a citizen of the Republic of the Philippines, and a nonresident of, and not a citizen of the State of California. It is and was at all times herein-mentioned a corporation duly organized and existing under the laws of the Republic of the Philippines.

The plaintiff at the time of the commencement of this action was, ever since has been, and still is a resident and citizen of one of the states of the United States, to wit, the State of California, and is not, and at no time herein-mentioned has been a citizen or resident of the Republic of the Philippines.

Other than your petitioner, the only other defendants are certain alleged persons designated by the fictitious [7] names of First Doe, Second Doe, and Third Doe. The so-called defendants First Doe, Second Doe, and Third Doe which are fictitious designations are not actual parties but merely nominal or formal and nonexistent. No one has been served with process herein save your petitioner.

By reason of the facts stated there is diversity of citizenship between the plaintiff on the one hand and the sole party named as defendant and served with process on the other hand.

Your petitioner presents herewith a good and sufficient bond as required by the statute in such cases that it will enter in the United States District Court for the Northern District of California, Southern Division within thirty (30) days from the filing of this petition a certified copy of the record in this suit, and for the payment of all costs which may be awarded by said District Court if said District Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner desires to remove said action to the United States District Court pursuant to the acts of Congress in such cases made and provided.

Wherefore, your petitioner, The De La Rama Steamship Co., Inc., a corporation, prays that this honorable Court proceed no further herein except to make an order of removal required by law and to accept the said bond, and to cause the record herein to be removed into the United States District Court for the Northern District of California,

Southern Division, and for such other relief [8]
as may be meet and proper in the premises.

/s/ THE DE LA RAMA STEAMSHIP
CO., INC.,

By /s/ ALAN B. ALDWELL,
Its Attorney.

/s/ BROBECK, PHLEGER &
HARRISON,

/s/ HERMAN PHLEGER,

/s/ ALAN B. ALDWELL,
Attorneys for Defendant. [9]

(Duly Verified.)

(Receipt of Service.)

[Endorsed]: Filed Dec. 31, 1946. [10]

[Title of Superior Court and Cause.]

ORDER FOR REMOVAL OF CAUSE TO
UNITED STATES DISTRICT COURT

The De La Rama Steamship Co., Inc., a corporation, sued herein as De La Rama Steamship Co., Inc., a corporation, defendant in the above-entitled cause, having filed its petition in due form and within the time allowed by law for the removal of this cause to the United States District Court, for the Northern District of California, Southern Division, and having also filed its bond in the sum of Five Hundred Dollars (\$500.00), conditioned as provided by law, with a good and sufficient surety, and it appearing to the court that the above-en-

titled action should be removed to the said District Court of the United States as prayed for [11] in said petition, and that the aforesaid bond is good and sufficient;

Now, Therefore, It Is Ordered, Adjudged and Decreed that the above-entitled action be, and it is hereby removed to the said United States District Court for the Northern District of California, Southern Division; the Clerk of this court is directed to prepare and certify a transcript of record of said cause for filing in the said United States District Court upon payment to him of his proper fee therefor; that said bond is hereby approved, and that all further proceedings herein shall be and they are hereby stayed.

Done in open court this 2nd day of January, 1947.

HERBERT C. KAUFMAN.

Judge of the Superior Court.

[Endorsed]: Filed Jan. 2, 1947.

[12]

In the United States District Court for the
Northern District of California,
Southern Division

No. 26761-G

H. H. PIERSON,

Plaintiff,

vs.

DE LA RAMA STEAMSHIP CO., INC., a cor-
poration, FIRST DOE, SECOND DOE,
THIRD DOE,

Defendants.

ANSWER OF DEFENDANT THE DE LA
RAMA STEAMSHIP CO., INC.

Defendant The De La Rama Steamship Co., Inc.,
a corporation, sued herein as De La Rama Steam-
ship Co., Inc., answers plaintiff's complaint as fol-
lows:

Answering the first alleged cause of action:

I.

Admits the allegations contained in paragraph I.

II.

Answering the allegations contained in para-
graph II, this defendant admits that plaintiff was
employed by it as its Pacific Coast Manager at its
San Francisco office under the terms of a verbal
contract of employment; except as herein expressly
admitted, this defendant denies [13] each and
every, all and singular, the allegations contained
in said paragraph II.

III.

Denies each and every, all and singular, the allegations contained in paragraph III, except that this defendant admits that Mr. R. F. Suewer is and at all of the times mentioned in the complaint was a Vice-President and an agent and employee of this defendant, and in particular denies that he would be acting within the course and/or scope of his employment in making any such alleged contract as is alleged in said paragraph.

IV.

Answering the allegations contained in paragraph IV, this defendant admits that plaintiff was its Pacific Coast Manager until August 31, 1946, which said date was after the date upon which actual warfare of the United States ceased; except as herein expressly admitted, denies each and every, all and singular, the allegations contained in said paragraph IV.

V.

Answering the allegations contained in paragraph V, admits that during the period from December 7, 1941 to October 1, 1943, plaintiff was paid a salary by this defendant at the rate of \$600 per month; admits that during the period from October 1, 1943 to August 14, 1945, plaintiff was paid a salary at the rate of \$708.33 per month; admits that the total salary paid by this defendant to plaintiff from December 7, 1941 to August 14, 1945, was the sum of \$28,967.66; admits that it paid to plaintiff the sum of \$2500 on July 15, 1946, and alleges that said payment was offered to plaintiff

by this defendant in [14] full settlement of any and all claims which plaintiff might have against this defendant for a bonus and/or other compensation and accepted by plaintiff with full knowledge of such condition; admits that plaintiff has made demand upon this defendant for payment of the sum of \$12,758.56; except as herein expressly admitted, denies each and every, all and singular, the allegations contained in said paragraph V and particularly denies that there is any sum due, owing or payable to plaintiff by this defendant either as alleged in said complaint or otherwise or at all.

VI.

Admits that actual combat warfare against the United States in World War II ended and ceased on or about August 14, 1945; admits that a reasonable time has elapsed since said date to the date of the complaint herein for the payment of any additional sums which might be due plaintiff by this defendant, if any such payment were due, but denies that any such payment ever was or is now due and/or payable.

As and for a second, separate and affirmative defense to said first alleged cause of action, this defendant alleges as follows:

I.

After the said alleged cause of action, if any, arose and on or about the 15th day of July, 1946, this defendant, while denying any liability for the payment of any bonus and/or other compensation, either as alleged in the complaint or otherwise,

offered to plaintiff the sum of \$2500 on condition that it was in full payment of [15] any and all claim or claims which plaintiff might have against this defendant for any bonus and/or other compensation to be paid to him at the conclusion of World War II or otherwise; said payment was accepted by plaintiff with full knowledge of the said condition under which it was offered, and as a result there was a full accord and satisfaction of the claim stated in the complaint and any and all liability on the part of this defendant for the payment of any bonus or other compensation was fully and completely discharged.

As and for a third, separate and affirmative defense to said first alleged cause of action, this defendant alleges as follows:

I.

At all of the times mentioned in the complaint this defendant was and now is the employer of more than eight employees in a single business and as such was subject to and obliged to comply with all of the provisions of the Act of Congress known as the Stabilization Act of 1942 (50 U.S.C. App. Secs. 961 et seq.) and the regulations lawfully promulgated thereunder by the Economic Stabilization Director and the Commissioner of Internal Revenue of the Treasury Department of the United States which said regulations, among other things, required the approval of the Commissioner of Internal Revenue for any increase in the salary of any employee whose salary was in excess of \$5000 per year; the payment or receipt of any salary to

or by such an employee in contravention of said regulations was illegal and punishable as a crime under said Act and any agreement for the increase or for [16] payment of an increase in salary whether at that time or at any time in the future without such approval was therefore contrary to public policy, illegal, unenforceable and void; all of said provisions were in full force and effect in the month of February, 1944, when the agreement for payment of bonus and/or other compensation as alleged in the complaint allegedly took place, and accordingly if any such agreement was made, it is illegal and void.

Answering the second alleged cause of action:

I.

This defendant refers to and by this reference incorporates herein all of the allegations contained in its first defense to plaintiff's first alleged cause of action as though set forth here in detail.

II.

Denies each and every, all and singular, the allegations contained in paragraph II, except that this defendant admits that the sum of \$31,467.66 has been paid and that demand has been made for the payment of \$12,758.56, and that this defendant refuses to pay said sum or any part thereof.

As and for a second, separate and affirmative defense to said second alleged cause of action, this defendant alleges as follows:

I.

This defendant refers to and by this reference incorporates herein its second defense to plaintiff's

first alleged cause of action as though said defense were set forth here in detail. [17]

As and for a third, separate and affirmative defense to said second alleged cause of action, this defendant alleges as follows:

I.

This defendant refers to and by this reference incorporates herein its third defense to plaintiff's first alleged cause of action as though said defense were set forth here in detail.

Wherefore, this defendant prays that plaintiff take nothing by his complaint herein, and that it be hence dismissed with its costs of suit.

/s/ BROBECK, PHLEGER &
HARRISON,

/s/ HERMAN PHLEGER,

/s/ ALAN B. ALDWELL,

Attorneys for defendant The De La Rama Steamship Co., Inc. [18]

(Duly Verified.)

(Receipt of Service.)

[Endorsed]: Filed Feb. 25, 1947. [19]

[Title of District Court and Cause.]

ORDER FOR JUDGMENT

While I am convinced by the evidence that the plaintiff has been unfairly treated by the defendant through its general manager, there is not in the record any evidence of contractual liability up-

on the part of the defendant. Consequently it is my duty to render judgment for defendant and such will be the order.

Dated December 18, 1947.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed Dec. 19, 1947. [20]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on November 6 and 10, 1947, before the Honorable Louis E. Goodman, United States District Judge, upon the issues raised by the complaint and the answer of defendant The De La Rama Steamship Co., Inc. Robert G. Partridge, Esq. appeared for plaintiff and Messrs. Brobeck, Phleger and Harrison, by Alan B. Aldwell, Esq., appeared for said defendant, and evidence, both oral and documentary, was received by the Court and the matter was argued by counsel and thereafter upon submission of briefs by respective counsel, the matter was, on December 1, 1947, submitted [21] for decision. After consideration of the evidence and stipulations of counsel, and the law and briefs and arguments of counsel, and having been fully advised in the premises, the Court announced its decision for said defendant and now makes its findings of fact and conclusions of law:

FINDINGS OF FACT

1. At all pertinent times plaintiff was and is a citizen of the United States and a resident of the Northern District of California, Southern Division.

2. At all pertinent times defendant The De La Rama Steamship Co., Inc., sued herein as De La Rama Steamship Co., Inc., was and is an alien corporation organized and incorporated under the laws of the Republic of the Philippines and engaged in a general maritime shipping business and having offices in the City and County of San Francisco, State of California, and within the Northern District of California, Southern Division. The other defendants mentioned in the complaint are fictitious defendants and have not been served with any process herein. As hereinafter used, the term "defendant" refers solely to defendant The De La Rama Steamship Co., Inc.

3. The allegations contained in paragraph II of the first cause of action of the complaint are true.

4. R. F. Suewer is, and since February 23, 1946, has been, a Vice President of the defendant, and at all pertinent times was and is United States manager of defendant; during the month of February, 1944, plaintiff and the said Suewer engaged in a conversation in the course of which the said Suewer stated that when the then existing [22] war was over, he would recommend to the Board of Directors of defendant in the Philippines that a bonus be paid to the key men in the United States equal to the reasonable value of the services performed by them; [L.E.G.-D.J.] organization of defendant; ^v the said Suewer, at the conclusion of the war, made a recommendation

to the Board of Directors of defendant, as a result of which plaintiff received a bonus of \$2500.00; except as herein stated, the allegations contained in paragraph III of the first cause of action of said complaint are untrue.

5. It is true that plaintiff continued in his position as Pacific Coast manager for defendant until in reliance upon the statements of Suewer above referred to [L.E.G.-D.J.] August 31, 1946, ^v which said date was after the date upon which actual warfare of the United States ceased, but except as herein stated, the allegations contained in paragraph IV of the first cause of action of said complaint are untrue.

6. During the period from December 7, 1941 to April 8, 1943, plaintiff was paid a salary by defendant at the rate of \$600.00 per month plus a bonus at the end of each year of \$600.00, or a total for said period of \$10,220.00; during the period April 9, 1943 to March 16, 1945, plaintiff was paid a salary by defendant at the rate of \$708.33 per month, plus a bonus at the end of each year of \$708.33, or a total sum for said period of \$17,873.56; during the period from March 17, 1945 to August 14, 1945, plaintiff was paid a salary by defendant at the rate of \$750.00 per month, which, together with a prorating of his bonus for the year 1945, gave him a total remuneration for said period of \$3,981.25; for the entire period from December 7, 1941 to August 14, 1945, and [23] including the \$2,500.00 bonus above referred to, plaintiff received from defendant a total remuneration of

\$34,574.81; if plaintiff had been receiving a salary which would have been reasonable compensation [L.E.G.-D.J.] of \$1,000.00 per month during said period, ^v he would have received the sum of \$44,250.00; except as herein stated, the allegations contained in paragraph V of the first cause of action of said complaint are untrue.

7. Actual warfare of the United States in World War II ended and ceased August 14, 1945.

8. The allegations contained in paragraph II of plaintiff's second cause of action are untrue, except for the allegation that defendant fails and refuses to pay to plaintiff the sum demanded by him or any part thereof.

9. At all pertinent times, the defendant was and is the employer of more than eight employees in a single business within the United States.

10. No approval was ever sought for or obtained from the Salary Stabilization Unit of the Treasury Department for the payment of any bonus by defendant to plaintiff.

11. At the trial of this action, the defendant withdrew its second defense contained in its answer to each of the causes of action alleged in the complaint.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the Court concludes:

1. The necessary diversity of citizenship between plaintiff and defendant and amount in controversy

exist so as to bring the action within the jurisdiction of this Court. [24]

2. There was and is no contractual liability on the part of defendant to pay plaintiff the amount demanded by him, or any part thereof, either as alleged in the complaint or otherwise or at all.

3. By reason of the preceding conclusion of law, this Court has come to no conclusion concerning the affirmative defenses of illegality pleaded in defendant's answer.

4. Defendant is entitled to a judgment in its favor dismissing the action and awarding to it its costs.

Let judgment be entered accordingly.

Dated at San Francisco, California, February 6th, 1948.

/s/ LOUIS E. GOODMAN,
United States District Judge.

(Receipt of Service.)

[Endorsed]: Filed Feb. 6, 1948.

[25]

In the United States District Court for the
Northern District of California,
Southern Division

No. 26761-G

H. H. PIERSON,

Plaintiff,

vs.

DE LA RAMA STEAMSHIP CO., INC., a cor-
poration, FIRST DOE, SECOND DOE,
THIRD DOE,

Defendants.

JUDGMENT

The above entitled cause came on regularly for trial on November 6 and 10, 1947, upon the issues raised by the complaint and the answer, both parties appearing by counsel, and thereupon evidence, both oral and documentary, was received by the Court and the matter was argued by counsel, and thereafter upon submission of briefs and consideration of the evidence and stipulations of counsel, and having been fully advised in the premises, the Court announced its decision for the defendant, and thereafter the Court duly made and filed its findings of fact and conclusions of law, whereby it was directed that [26] judgment be entered for the defendant.

It Is Therefore Hereby Ordered, Adjudged and Decreed that plaintiff take nothing in this action and that the action be and it is hereby dismissed on the merits, that defendant have and recover

from plaintiff its costs amounting to \$94.20, and that defendant have execution therefor.

Dated February 13th, 1948.

LOUIS E. GOODMAN,
United States District Judge.

Approved as to form as provided in Rule 5(d).

ROBERT G. PARTRIDGE,
Attorney for Plaintiff.

Entered in Civil Docket Feb. 14, 1948.

[Endorsed]: Filed Feb. 13, 1948. [27]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

To the Defendant, De La Rama Steamship Co., Inc., a corporation, and to Messrs. Brobeck, Phleger & Harrison and Alan B. Aldwell, its attorneys:

You and each of you will please take notice that the plaintiff H. H. Pierson, above named, intends to and does hereby move the above entitled court to vacate and set aside the findings of the court and judgment entered thereon in the above entitled action, and to direct the entry of judgment, and to render judgment in favor of plaintiff and against defendant De La Rama Steamship Co., Inc., or to grant a new trial of said cause upon the following grounds:

1. The evidence in said cause justifies and re-

quires a judgment in favor of the plaintiff and against said defendant.

2. Insufficiency of the evidence to justify the decision and judgment, as the same are contrary to the evidence and to the [28] law applicable to the facts of the case.

3. Errors in law occurring at the trial and excepted to by plaintiff.

Said motion will be made and based upon the transcript, records, files and minutes of the above court.

ROBERT G. PARTRIDGE,
Attorney for Plaintiff.

Dated February 20, 1948.

(Receipt of Service.)

[Endorsed]: Filed Feb. 21, 1948. [29]

[Title of District Court and Cause.]

ORDER GRANTING MOTION FOR NEW
TRIAL AND DIRECTING JUDGMENT
FOR PLAINTIFF

Upon reconsideration of this cause and after argument and further briefing by counsel, I am convinced that plaintiff should prevail. My original holding that the record does not disclose "any evidence of contractual liability upon the part of defendant" now appears to me to have been erroneous.

The record does disclose that the defendant's United States Manager had the authority generally

to hire and discharge employees. The legal effect of the understanding between plaintiff and defendant's United States Manager was [30] that plaintiff would continue in defendant's employ at a salary or compensation to be later fixed. This was tantamount to a hiring at an undetermined salary equivalent at least to the reasonable value of plaintiff's services. § 1611 California Civil Code.

A finding to this effect should be included in the findings of fact.

The judgment heretofore entered is set aside and judgment may be entered in favor of plaintiff for the sum of \$9650.00. Submit findings and judgment accordingly.

Dated June 9, 1948.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed June 9, 1948. [31]

[Title of District Court and Cause.]

PLAINTIFF'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on November 6 and 10, 1947, before the Honorable Louis E. Goodman, United States District Judge, upon the issues raised by the complaint and the answer of defendant The De La Rama Steamship Co., Inc. Robert G. Partridge, Esq. appeared for plaintiff and Messrs. Brobeck, Phleger & Harrison, by Alan B. Aldwell, Esq., appeared

for said defendant, and evidence, both oral and documentary, was received by the court and the matter was argued by counsel and thereafter upon submission of briefs by respective counsel, the matter was on December 1, 1947, submitted for decision. After consideration of the evidence and stipulation of counsel and the law and briefs and arguments of counsel, the court announced its decision for the defendant and thereafter executed, signed and filed findings of fact and conclusions of [32] law wherein judgment was ordered entered for defendant.

Thereafter and in the manner prescribed by law, plaintiff duly filed and served his motion for new trial, and thereafter and on the 3rd day of May, 1948 said motion came on for hearing before the court, whereupon said motion was argued on behalf of plaintiff by the said Robert G. Partridge, Esq., and on behalf of defendant by the said Alan B. Aldwell, Esq. The court thereupon requested that the said respective parties prepare and file with the court memoranda of law regarding grounds for such motion and the sufficiency thereof. Thereafter, upon submission of briefs by respective counsel the matter was submitted for decision on the ... day of June, 1948.

The court having been fully advised and having reconsidered the evidence and the law, briefs and arguments of counsel, and being of the opinion that the evidence in the case justifies and requires a judgment in favor of plaintiff and against the defendant; that the evidence in said cause is in-

sufficient to justify the decision and judgment heretofore made and entered as the same were contrary to the evidence and to the law applicable to the facts of the case, thereby duly made and entered its order that the judgment heretofore rendered in the above entitled case be opened, vacated and set aside; that amended findings of fact and conclusions of law be adopted, and that judgment be entered in favor of the plaintiff and against the defendant in the sum of \$9,650.00, ~~plus interest on said sum~~, [L.E.G.-D.J.] together with plaintiff's costs of suit.

The court now makes its findings of fact and conclusions of law:

FINDINGS OF FACT

1. At all pertinent times plaintiff was and is a citizen of the United States and a resident of the Northern District of California, Southern Division. [33]

2. At all pertinent times defendant The De La Rama Steamship Co., Inc., sued herein as De La Rama Steamship Co., Inc., was and is an alien corporation organized and incorporated under the laws of the Republic of the Philippines and engaged in a general maritime shipping business and having offices in the City and County of San Francisco, State of California, and within the Northern District of California, Southern Division. The other defendants mentioned in the complaint are fictitious defendants and have not been served with any process herein. As hereinafter used, the term "defendant" refers solely to defendant The De La Rama Steamship Co., Inc.

3. The allegations contained in paragraph II of the first cause of action of the complaint are true.

4. R. F. Suewer now is and at all of the times herein mentioned has been the United States General Manager of the defendant corporation and at all of said times was acting within the course and scope of his authority as such manager of said defendant corporation. At all of the times herein mentioned said R. F. Suewer as United States Manager for said defendant had authority to hire and discharge employees, including the plaintiff. During the month of February, 1944, plaintiff and said Suewer engaged in conversations in the course of which the said Suewer represented, stated and promised to plaintiff ~~on behalf of defendant corporation~~ that if he, the plaintiff, would continue in the defendant's employ until the termination of the then existing war, said defendant corporation would, within a reasonable time after the then existing war was over, pay to plaintiff a sum of money, which together with the salary and bonuses received by plaintiff from defendant during the continuation of said war, would equal the reasonable value of the services performed by plaintiff for defendant corporation during the period of warfare. The said Suewer at said time represented, ~~stated and~~ [34] ~~promised to the said plaintiff~~ [L.E.G.-D.J.] that at the conclusion of the war the said Suewer would recommend to the Board of Directors that such additional sum of money or bonus be paid to plaintiff by defendant, which together with the salary and bonuses received by plaintiff during the war would equal the reasonable

value of the services performed by plaintiff for defendant during the period of warfare.

5. It is true that in the course of the conversations referred to, defendant corporation entered into an agreement with plaintiff in February of 1944, whereby plaintiff was hired by defendant from said time to the termination of the war, and that under and by virtue of the terms of the agreement of hiring, the total salary or compensation to be paid by defendant to plaintiff for his services from December 7, 1941 to August 14, 1945, the period during which actual warfare continued, was the reasonable value of plaintiff's services during such war period. Such additional compensation, salary or bonus, as together with the salary and bonuses received by plaintiff during the war would equal the reasonable value of the services performed by plaintiff for defendant during the period of warfare was payable by defendant to plaintiff within a reasonable time after the termination of the war.

6. Plaintiff continued in his position as Pacific Coast Manager for defendant until after August 14, 1945, believing and relying upon the promises, representations and statements made to him by defendant corporation through the said Suewer, and pursuant to the contract of hiring entered into as hereinbefore found, and defendant accepted and retained the benefit of the services of said plaintiff rendered on its behalf.

7. The reasonable value of the services performed by plaintiff for defendant during the period December 7, 1941 to August 14, 1945, which

period the court finds to be the period [35] of the existence of the warfare referred to, was and is the sum of \$44,250.00, no part of which has been paid by defendant to plaintiff, save and except the sum of \$34,600.00; there is now due, owing and unpaid by defendant to plaintiff as and for the balance due him for the reasonable value of his services during said period, the sum of \$9,650.00.

8. At the conclusion of the said warfare the said Suewer made a recommendation to the Board of Directors of defendant that plaintiff be paid the sum of \$2,500.00, and he was paid said sum by defendant, on the 15th day of July, 1946, which the court finds to be a reasonable time after the termination of said warfare to pay the additional compensation and wages due plaintiff by defendant. Said sum, together with the salary and bonuses he had received during the period of warfare referred to was less than the reasonable value of plaintiff's services for defendant during said period; the said Suewer did not recommend to the Board of Directors of said defendant that a bonus be paid by defendant to plaintiff which, together with the bonus, compensation and salary received by plaintiff from defendant during the period of actual warfare referred to would equal the reasonable value of the services rendered by plaintiff to the defendant.

9. Defendant became indebted to plaintiff in the sum of \$9,650.00, no part of said sum has been paid, although demand has been made therefor, and a reasonable time to pay plaintiff after the cessation of actual warfare in World War II had

elapsed upon the date of the filing of the complaint herein.

10. At all pertinent times, the defendant was and is the employer of more than eight employees in a single business within the United States.

11. No approval was ever sought for or obtained from the Salary Stabilization Unit of the Treasury Department for the [36] payment of any bonus or additional compensation by defendant to plaintiff, and none was necessary or required for the payment of the additional compensation due plaintiff as herein found. The additional compensation promised and agreed to be paid to plaintiff by defendant was payable under the terms of said contract of hiring only after and upon the termination of wage and salary controls during the period of warfare, as established and prescribed by the Act of Congress known as the Stabilization Act of 1942 (50 U.S.C. App. Sec. 961-7) and the regulations lawfully promulgated thereunder by the Economic Stabilization Director and the Commissioner of Internal Revenue of the Treasury Department of the United States, and said Act and the regulations thereunder did not and do not prohibit the payment of said additional compensation to plaintiff.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the court concludes:

1. The necessary diversity of citizenship between plaintiff and defendant and amount in controversy exist so as to bring the action within the jurisdiction of this court.

2. The judgment heretofore made and entered in favor of the defendant and against the plaintiff is against and contrary to the law and the evidence in said cause, and that said judgment heretofore rendered in favor of the defendant and against the plaintiff is hereby opened, vacated and set aside.

3. Defendant is indebted to plaintiff for the reasonable value of services rendered upon a contract of hiring in the sum of \$9,650.00, ~~with interest thereon at the rate of 7% per annum, from and after July 15, 1946.~~ [L.E.G.-D.J.]

4. Plaintiff is entitled to judgment against defendant in the sum of \$9,650.00, ~~plus interest thereon at the rate of [37] 7% per annum from and after July 15, 1946, to and including the . . . day of, 1948, upon which date this judgment is made and entered, amounting to the sum of \$,~~ [L.E.G.-D.J.] and to his costs of suit as herein incurred.

Let judgment be entered accordingly.

Dated San Francisco, California, June 21, 1948.

LOUIS E. GOODMAN,

United States District Judge.

Entered in Civil Docket, June 23, 1948. C. W. Calbreath.

Not approved as to form as provided in Rule 5(d): See letter dated June 18, 1948.

BROBECK, PHLEGER &

HARRISON,

Attorneys for Defendant.

(Receipt of Service.)

[Endorsed]: Filed June 21, 1948.

[38]

In the United States District Court for the
Northern District of California,
Southern Division

No. 26761-G

H. H. PIERSON,

Plaintiff,

vs.

DE LA RAMA STEAMSHIP CO., INC., a corporation,
FIRST DOE, SECOND DOE,
THIRD DOE,

Defendants.

JUDGEMENT

The above entitled caause came on regularly for trial on November 6 and 10, 1947, upon the issues raised by the complaint and the answer, both parties appearing by counsel, and thereupon evidence, both oral and documentary, was received by the Court and the matter was argued by counsel, and thereafter upon submission of briefs and consideration of the evidence and stipulations of counsel, and having been fully advised in the premises, the Court announced its decision for the plaintiff, and thereafter the Court duly made and filed its findings of fact and conclusions of law, whereby it was directed that judgment be entered for the plaintiff and against the defendant in the sum of \$9,650.00, plus costs of suit incurred. [39]

It Is Therefore Ordered, Adjudged and Decreed that plaintiff have and recover from defendant, The De La Rama Steamship Co., Inc., a corpora-

entered in this action on June 9, 1948 and from the final judgment entered on June 28, 1948, and from each of them severally.

Dated July 8, 1948.

BROBECK, PHLEGER &
HARRISON,

Attorneys for Appellant The De La Rama Steam-
ship Co., Inc.

(Receipt of Service.)

[Endorsed]: Filed July 8, 1948.

[41]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND
DOCKETING APPEAL

It appearing to the Court that notice of appeal herein was filed by appellant on July 8, 1948, and that the Designation of Contents of Record on Appeal was filed on July 9, 1948, and that the reporter will be unable to prepare the transcript of the evidence within the forty-day period prescribed by Rule 73(g) of the Federal Rules of Civil Procedure;

Now, on motion of Messrs. Brobeck, Phleger & Harrison, attorneys for appellant, it is hereby ordered that the time within which the Record on

Appeal shall be [42] filed and the appeal docketed, be and it is hereby extended to and including September 30, 1948.

Dated August 16, 1948.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed Aug. 16, 1948.

[43]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Appellant designates the following portions of the record to be contained in the record on appeal in the above-entitled action:

1. Complaint;
2. Petition for Removal to the District Court of the United States;
3. Order for Removal;
4. Answer;
5. Transcript of the entire evidence;
6. Deposition of H. H. Pierson;
7. Deposition of R. F. Suewer; [44]
8. All Exhibits introduced at the trial;
9. Order for Judgment dated December 18, 1947 and filed December 19, 1947.
10. Findings of Fact and Conclusions of Law dated and filed February 6, 1948;
11. Judgment entered February 14, 1948;
12. Plaintiff's Motion for New Trial;

13. Order Granting Motion for New Trial and Directing Judgment for Plaintiff, dated and filed June 9, 1948;

14. Findings of Fact and Conclusions of Law dated and filed June 21, 1948;

15. Judgment entered June 28, 1948;

16. Notice of Appeal;

17. This Designation.

Dated July 9, 1948.

BROBECK, PHLEGER &
HARRISON,

Attorneys for Appellant The De La Rama Steamship Co., Inc.

(Receipt of Service.)

[Endorsed]: Filed July 9, 1948.

[45]

[Title of District Court and Cause.]

STIPULATION AND ORDER AMENDING
DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

It Is Hereby stipulated by and between the parties hereto that the designation of contents of record on appeal heretofore filed on July 9, 1948 is hereby amended so that the record on appeal shall also include the following documents:

certifying the foregoing transcript of record on appeal is the sum of three dollars and twenty cents (\$3.20) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 28th day of September, A. D. 1948.

(Seal)

C. W. CALBREATH,
Clerk.

[48]

In the Southern Division of the United States
District Court for the Northern District
of California

Before: Hon. Louis E. Goodman, Judge.

No. 26,761-G

H. H. PIERSON,

Plaintiff,

vs.

DE LA RAMA STEAMSHIP CO., INC., a corpo-
ration, FIRST DOE, SECOND DOE, THIRD
DOE,

Defendants.

REPORTER'S TRANSCRIPT

Thursday, November 6, 1947

Appearances: For Plaintiff: Robert G. Partridge, Esq. For Defendants: Messrs, Brobeck, Phleger & Harrison, By Alan B. Aldwell, Esq. [1*]

The Clerk: Pierson vs. De La Rama Steamship Co., for trial.

Mr. Partridge: The plaintiff is ready.

Mr. Aldwell: The defendant is ready.

Mr. Partridge: I wonder if I may briefly address your Honor on the issues of the case with respect to the plaintiff?

The Court: I have read the pleadings, if that would be of any help to you.

Mr. Partridge: Very well.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

The Court: The pleadings present a very simple issue as to whether or not this agreement was made.

Mr. Partridge: With your Honor's indulgence I believe it might be helpful if I could enlarge on the picture presented by the pleadings. I will try to make it brief. As your Honor knows, the pleadings allege a contract made between the plaintiff and the defendant with respect to the wages or compensation to be paid Mr. Pierson for his services as Pacific Coast Manager of the defendant steamship line during the war period. The evidence will show that prior to the war, and in January, 1940, the defendant became employed by the De La Rama Steamship Company, a Philippine corporation, in the same capacity that he occupied during the time in issue or in question, and that his duties before the war might generally be described to include the management of the affairs of the company on this coast, both in San Francisco [2] and in Los Angeles, bearing in mind that at that time the company was the owner of about seven vessels, if my memory serves me correctly, all of which, of course, were in and out of this port, not domiciled or based here, but touching here as a port of call regularly.

The outbreak of the war found the company with far fewer total vessels of its own, and there ensued after the outbreak of war a lull or a period of uncertainty while the company was attempting to get agency contracts from the War Shipping Administration, first the Maritime Commission, and then that was succeeded by the War Shipping Ad-

ministration. They were successful in doing that, Mr. Pierson all the while remaining with the company, and as a result its operations changed from one in which a couple of ships a month was an average in and out of the port, to from five to ten ships in and out of the ports under the jurisdiction of Mr. Pierson.

In addition, delivery was taken over some 20 or 21 vessels made in the various local bay shipyards. That entailed, of course, a thorough inspection of the vessel, the acceptance of it, the manning of it, supplying officers and crew, provisioning it, fueling it, and finally delivering it appropriately to the docks in San Francisco or Los Angeles for loading. All their work during the war, as your Honor undoubtedly knows, was for the account of the Navy [3] and the Army, or at least essentially all of it, shall I say, and 21 such ships were accepted by the company during this war period.

In addition to that, the company was the agent of other steamship lines based elsewhere—for example the State Steamship Lines, based at Vancouver, Washington, which company, in turn, was an agent of W. S. A., but as was common among steamship companies, appointed agents in places, including San Francisco, to handle its boats that it operated for W. S. A. So as a result the volume of shipping, the duties of Pierson and all of the managers of steamship lines increased many fold during this war period. It was a big job, a job that was very exacting, and a job that was very successfully, in the aggregate, conducted by the shipping interests.

Mr. Suewer, whose deposition has been taken in this matter, which will undoubtedly be read, or portions of it read as evidence in the case, was before the war and at the outbreak of the war entitled the United States Manager for the defendant steamship company, and your Honor will bear in mind that he was actually the only—I do not believe he was an officer, but the only representative of the De La Rama Steamship Company in the United States, at all, that is to say, all of the operations of this company, from the time of the outbreak of the war, were necessarily under the jurisdiction only of Mr. Suewer, that is to say, he entered [4] into agency contracts with the Government, with other steamship lines, he bought and sold vessels, he collected his commissions from the Government, he handled all the funds, he did everything simply because the home office of the corporation was completely out of touch with the United States after the outbreak of war sometime in December, 1941. He hired people. He raised their salaries. He fired them. He was the corporation in every sense of the word, and I am stressing that because I believe it will be important in view of the issues raised by the deposition and the pleadings.

Under him was a man named Griffin, who was entitled his assistant United States manager, and then Mr. Pierson was next.

At frequent intervals, and particularly in February, 1944, Mr. Pierson discussed with Mr. Suewer, he being the only one to discuss matters with, the

question of the wage scale of this steamship company as compared with other steamship companies in comparable operations on the coast, and he pointed out to Mr. Suewer that the scale was substantially less, and that a number of the key men, including he, Mr. Pierson, would leave to go to other steamship companies where they could make substantially more, unless some method was found to reimburse these key men, including Pierson, for these extraordinary wartime services. At that time, of course, the Stabilization Act was in effect, freezing salaries as of [5] October 3rd—I believe salaries as of October 27, 1942 and wages as of October 3, 1942. For that reason, and for other excuses, good or bad, given by Mr. Suewer, the only action that was taken with respect to Mr. Pierson's repeated demands was an application for two raises so far as Pierson was concerned. He was raised from \$600 a month, his salary commencing with the outbreak of the war, to \$708 in October, 1943, and to \$750 in 1945. Mr. Suewer, in response to questions addressed to him by Mr. Pierson, said substantially, "I realize that we are below the scale or the average pay. I know that something will have to be done about it. If you men will play along with us, I will see that at the conclusion of the war the company will pay you such additional sum as, together with your wartime pay, will bring you up to the standard of comparable jobs on this coast, if you will play along with us and do not leave us in the lurch now," adding, too, that he was getting what he expressed as a niggardly re-

turn, but he was going to have to wait, and he was going to see that upon the conclusion of the war he was amply rewarded for his services.

After the war and after Mr. Pierson and his other assistants had done an excellent job, Mr. Suewer caused these bonuses to be paid. Suewer had been earning \$1000 a month. He caused himself to be paid an additional \$28,000 a year for some four years plus. He caused Mr. Griffin, who was [6] making some \$850 a month, to be paid an additional total bonus I believe of \$26,000. His view of what should be paid to Mr. Pierson in line or in view of the arrangements had between him, was that Pierson should receive merely the sum of \$2500, which, peculiarly enough, was the same sum that was likewise received by two assistants of Mr. Pierson, Mr. McManus and Mr. Middleton, both of whom were supervised by Mr. Pierson. Mr. Pierson got merely the same amount.

When Mr. Pierson attempted to take Mr. Suewer to task regarding the situation, and to point out what he deemed to be the inequity of the situation, Mr. Suewer refused to discuss the matter with him at all. Now, we propose to show that comparable jobs held by other employees of steamship companies compared to this one paid a minimum of \$12,000 a year, as alleged in the complaint, up to as high as \$20,000; and that that was the reasonable value of his services, and that necessarily was implied in the agreement or the discussion had with Mr. Suewer. We propose to show Mr. Pierson had multifarious duties which he efficiently, capably

and consistently performed on behalf of the corporation, and if we show those things we ask a judgment at the hands of this court in such additional amount as the court finds is reasonable for the services performed.

The Court: I know it is in the answer, Mr. Partridge, that this payment of \$2500 is claimed to have been an accord [7] and satisfaction. Is that a matter that will be in dispute between the parties?

Mr. Partridge: I had better ask Mr. Aldwell to answer, your Honor. We had some discussion on the subject recently.

Mr. Aldwell: We had some discussion on that, and we won't press that point, your Honor, because I have taken Mr. Pierson's deposition subsequent to filing the answer. I think it is fairly clear that he accepted the claim before he realized our position on that. So we won't press that particular point.

The Court: The issue will be squarely whether there was such an agreement?

Mr. Aldwell: It is a little more than that. Are you finished, Mr. Partridge?

Mr. Partridge: Yes.

Mr. Aldwell: If Mr. Partridge is finished I would like to be heard a minute to clarify the matter.

The Court: Yes.

Mr. Aldwell: Mr. Partridge's statement I think fairly accurately depicts the situation, except as to certain statements of fact which are in dispute.

Our position is, 1, Mr. Suewer had no authority to enter into any such agreements as are alleged in the complaint; but even if he did, any agreement that was made was purely one of grace, you might say, on the part of the corporation—in other words, that [8] Mr. Pierson did not have any binding contract, because it was entirely too indefinite. It was just that Mr. Suewer would see what he could do at the end of the war. He did. He went over there and discussed it with them, and he was given authority to set the bonuses for the so-called key men in the United States. He sent Mr. Pierson \$2500. The money was paid to him. They do not dispute that. If there was a contract, it was performed.

Furthermore, we contend that if there was any such contract, binding contract, you might say, otherwise binding contract on the part of the defendant to pay Mr. Pierson a bonus such as he alleges, then it was illegal because of the provisions of the Wage Stabilization Act and the regulations of the Salary Stabilization Unit.

The Court: Even if it was not to be paid until after the war?

Mr. Aldwell: Even if it was not to be paid until after the war.

The Court: In other words, that statute made agreements just as invalid as actual payments?

Mr. Aldwell: That is our contention, your Honor, yes, that there would be no question but what it could not have been paid at that time. It could not have been paid on August 14, 1945, when

the war ended—at least for purposes of this action it could not have been paid then, because the wage controls [9] were still on. They were not taken off until August 18th. They were changed so you could give salary increases as long as you did not want price relief, and, of course, they all came off in 1946. Our contention is the agreement being invalid from its inception, it could not become valid by reason of subsequent developments.

The Court: Wouldn't an agreement to pay an additional salary at a time when the payment of it would no longer be contrary to any statute, in itself be unlawful?

Mr. Aldwell: That is our contention. Otherwise, there would be no point to it. Everybody could have done the same thing. The whole idea of wage stabilization would have been out the window. It was an obvious subterfuge.

The Court: Of course, that is a point you would have to argue, whether the mere entering into of an agreement to pay at some time when it would be lawful to make the payment would of itself, have any impact on the anti-inflationary program for Congress. I suppose it would take an economist or someone else to answer that question.

Mr. Aldwell: I think apart from that, your Honor, assuming the agreement was for the payment of the bonus after they could get in touch with Manila, that did not necessarily contemplate that the wage controls or salary controls would be off, and any such agreement, if there was any, was not made with any regard to whether they would be on or off. [10]

The Court: There will be a dispute as to what the actual agreement was?

Mr. Aldwell: Very definitely.

The Court: Assuming the authority of the manager to make the agreement, there will be a dispute as to the precise terms of that agreement?

Mr. Aldwell: Yes, your Honor.

The Court: That it is a factual question.

Mr. Aldwell: Yes, your Honor.

The Court: Is that all?

Mr. Aldwell: Except as to the legality point.

Mr. Partridge: It is not the time to argue the case. Your Honor has preconceived our position in the matter. I think that we can show your Honor there is not one word in the Stabilization Act that deals with a contract as distinguished from payment or receiving wages or salary. Indeed, as a prerequisite to filing an application for increase under the so-called Form 10, it was required that it be recited that there was a binding contract entered into by the parties—for example, unions and the employers to pay the increased wages—needing only the approval of the War Labor Board or the Salary Stabilization Unit to put it in effect, and that will be our position in the matter. [11]

HERMAN H. PIERSON,

the plaintiff herein, was called as a witness on his own behalf, and being first duly sworn testified as follows:

The Clerk: Q. Will you state your name to the court?

A. Herman H. Pierson.

(Testimony of Herman H. Pierson.)

Direct Examination

Mr. Partridge: Q. Where do you live, Mr. Pierson? A. In Larkspur, Marin County.

Q. How old are you? A. 62.

Q. Are you married? A. Yes, sir.

Q. Do you have a family?

A. Three daughters.

Q. How long have you lived in this area?

A. Do you mean within San Francisco?

Q. In the bay area.

A. I have lived here all my life, with the exception of three years.

Q. What is your business or occupation?

A. Steamship business.

Q. How long have you been in that business?

A. I started out in '21 in the offshore business, and I had five years' experience on the San Francisco Bay in river boating. [12]

Q. Prior to 1921 you were in the bay and river boat business, were you? A. That is right.

Q. With what company did you start your offshore career? A. The Dollar Steamship Line.

Q. How long were you with that company?

A. Eight years.

Q. What were your duties, finally, as you left the company?

A. I was a district freight agent.

Q. Why did you leave, do you remember?

A. I had a better offer to go with Williams, Dimond & Company.

Q. Is that a steamship line?

(Testimony of Herman H. Pierson.)

A. A steamship agent.

Q. You left there after eight years, or in 1929, did you? A. That is right.

Q. How long were you with Williams, Dimond & Company? A. Ten years.

Q. What were your duties at the conclusion of your employment there?

A. I was traffic manager during that period.

Q. Was that for this area? A. Yes, sir.

Q. Then where did you do?

A. I opened a corporation in San Francisco, or at least in California, called the De La Rama Steamship Agencies. [13]

Q. What that a steamship company, as such, or a corporation to act as an agency for a steamship company?

A. A corporation to act as an agency of the steamship corporation.

Q. Were you one of the owners of that company? A. I was part owner, yes.

Q. Who else was in it with you?

A. Mr. Bradford.

Q. Did you, among others, act as steamship agent for the De La Rama Steamship Line here?

A. We were the agents for them in California.

Q. At some time or other you went with the De La Rama Steamship Company?

A. The De La Rama Steamship Company bought out the agency business and put in their own offices in San Francisco and Los Angeles.

Q. And were you taken along as part of the deal, so to speak? A. Yes, sir.

(Testimony of Herman H. Pierson.)

Q. Did you then go to work for the De La Rama Lines? A. Yes, sir.

Q. When was that? A. July 1, 1940.

Mr. Partridge: It may be stipulated, Counsel, that the De La Rama Steamship Company is a Philippine corporation?

Mr. Aldwell: Yes. [14]

Mr. Partridge: Organized under the laws of the Philippine Islands, and doing business, among other places, in the State of California, at all of the times under discussion here?

Mr. Aldwell: So stipulated.

Mr. Partridge: Q. When you first went to work for the company what was your title?

A. The De La Rama Steamship Company—I was the Pacific Coast Manager.

Q. How many offices, if they had more than one, did the company have on this coast?

A. They had one here in San Francisco, and one in Los Angeles, and they had an office down in Long Beach, which is the dock office, where we docked our vessels.

Q. What territory did your management embrace? A. It took in the whole Pacific Coast.

Q. What salary were you paid at that time?

A. \$600.

Q. Per month? A. Yes, sir.

Q. Was there a bonus paid to you customarily during the years before the war?

A. A month's salary was paid to us at Christmas time.

Q. A month's salary?

(Testimony of Herman H. Pierson.)

A. A month's salary, yes, sir.

Q. Did you receive that all throughout your employment? [15]

A. I did, yes.

Q. That is, before the war and during the war?

A. Correct.

Q. The business of the De La Rama Steamship Company can be generally described as what? What does it do?

A. You mean before the war?

Q. Well, yes, before the war.

A. Before the war they were operating steamers from the Philippine Islands and oriental ports to the Atlantic Coast, via the Pacific Coast, and also had a service from the Philippines and oriental ports to the Pacific Coast.

Q. Were those two services described within the company in any particular way?

A. The one to the Atlantic Coast was called the A Service, and the one to the Pacific Coast the B Service.

Q. How many ships touched your territory on an average per month under conditions obtaining before the war in both Services A and B?

A. On the A Service we would have, say, the vessels calling in to Los Angeles coming from the Orient, where they discharged a certain amount of cargo and fuel, and then on their return to the Orient they would stop in at Los Angeles and San Francisco for cargo going to the Orient, and we would have one of those vessels about once every 21 days.

(Testimony of Herman H. Pierson.)

Q. That is in the A Service? [16]

A. In the A Service.

Q. How many would you have, on an average, would you say, in the so-called B Service from the Philippines?

A. On the B Service they operated three vessels; that gave us about a vessel a month.

Q. How many people did you have under your jurisdiction in conditions before the war?

A. I would say I had about 12 to 15 in all the offices.

Q. Did that include a manager for the Los Angeles office? A. That is right.

Q. Who was that, do you remember?

A. Mr. Hugh Middleton.

Q. Was he with the company before the war?

A. Yes, sir.

Q. Did you hire him?

A. I hired him when I opened my corporation, and then he was taken over when the De La Rama Corporation bought out my agency corporation.

Q. What other managers or executives were with the company before the war in your territory?

A. They brought over a Mr. Bradford from Manila, who was put in the San Francisco office as the No. 2 man in the United States.

Q. Your superior, in other words?

A. That is right. [17]

Q. What was his title, Assistant United States Manager? A. Correct.

Q. And then was Mr. McManus with the company before the war?

(Testimony of Herman H. Pierson.)

A. Just shortly before the war. I think McManus came with us about in March or April, 1941.

Q. What title was he given?

A. At that time he was the assistant superintendent on our dock.

Q. Do you remember the outbreak of the war in December, 1941? A. I do.

Q. Will you tell the court whether or not your company, or at least you, on behalf of the company, were in communication with the Philippine Islands from and after any particular date that you recall?

A. The company—most of the communications from the company were from the New York office to Manila, and they had communications up until, I would say, December, 1941.

Q. Did you, for example, on behalf of the company, or otherwise, communicate at all with any official of the company in the Philippine Islands, say, after the end or the close of the year 1941?

A. No, sir, we did not.

Q. Until the war was over? A. No, sir.

Q. Or any of them communicate with you?

A. Not the officials in Manila.

Q. So far as you know, after the close of the year 1941 until the conclusion of the war, was there any officer or member of the board of directors of the defendant company in the United States at any time? A. Not to my knowledge.

Q. Did you have any written communication with any of them? A. No, sir.

(Testimony of Herman H. Pierson.)

Q. Who managed the affairs of the company in the United States during the war years?

A. Mr. Suewer.

Q. And what are his initials?

A. I think it is R. E.

Q. You call him Bob, do you not?

A. That is right.

Mr. Aldwell: We will stipulate his initials are R. E.

Mr. Partridge: Q. Was Mr. Suewer with the company when you first went with it in 1940?

A. 1940, yes, he was taken over at the same time; they bought out another corporation in New York that was their United States Agent, and he went over the same time I went over to the corporation.

Q. In what capacity?

A. As United States Manager.

Q. Prior to the war, was it your instruction and custom to [19] report to Mr. Suewer respecting problems in connection with your operations here?

A. That is right.

Q. Did you report to Manila or to Mr. Suewer?

A. Mr. Suewer.

Q. What he did from there on was his own problem, is that correct, with regard to communicating or authority from Manila?

A. Correct.

Q. And so far as your operations during the war, did they change any from your operations in peacetime; that is to say, when I say "you" I mean the company's operations?

(Testimony of Herman H. Pierson.)

A. You say change the operations during the war against the peacetime operations?

Q. Yes. What changes, if any, took place in connection with the operations?

A. After we got our contract with the Government, naturally the operations were much greater.

Q. Let us go a little more slowly on it. You owned a number of vessels, did you, the company did, during peacetime?

A. Yes, they had three of their own that they ran in connection with some other ships under charter.

Q. Is that the total number of ships that they owned?

A. That is the total number of ships they owned, that they ran offshore in that service I am talking about.

Q. In the services you are concerned with? [20]

A. Yes.

Q. How many ships did the company own that were located at the outbreak of the war in waters within your territory?

A. They owned three ships.

Q. They still own the three, do they? Did they lose any of those three during the war?

A. They lost one.

Q. Did that reduce the total number of ships owned by them to two, or did they acquire others?

A. No, they only had the two.

Q. Did your company secure this contract with the Government immediately upon the outbreak of the war, or was there some lapse of time?

(Testimony of Herman H. Pierson.)

A. I think there was a lapse of about nine to ten months until they finally made the contract with the Government. I think it was September, 1942 when they finally made the contract with the Government.

Q. When you say the contract with the Government, will you briefly describe what that arrangement was? I mean, was that made to operate Government ships? I am taking the liberty of transgressing on the rules of evidence, because I think we are all generally familiar with what happened during the war. Was that so-called contract with the Maritime Commission to operate ships on its behalf in Government service?

A. That is right. [21]

Q. Do you know who executed that contract for the company? A. Mr. Suewer.

Q. How many ships did you operate for the Government?

A. Before we made that contract?

Q. No, pursuant to the contract, after the contract.

A. I think we took delivery of 21 ships under that contract from the Government.

Q. When you say "we" will you describe who you mean?

A. When I say "we" I mean the company took over the agency of 21 vessels.

Q. Where? New Orleans, New York, or where?

A. They took over 20 of them, if I recall correctly, which were taken delivery of in San Fran-

(Testimony of Herman H. Pierson.)

cisco or Los Angeles, and one was taken delivery up in Maine.

Mr. Aldwell: Q. What was that last statement?

A. One was taken delivery of up in Maine.

Mr. Partridge: Q. Will you tell the court, without too much detail, but generally tell the court what taking delivery of a vessel entails, so far as your responsibility is concerned?

A. It is a matter of checking up with the shipyard to find out what the date of delivery would be, providing officers over there so many days before that date, and then on the date of taking delivery, checking up with the officers to see that the ship was in proper condition for delivery to be taken; then [22] supplying the crew to man the vessel, taking delivery of the ship from the shipyard, putting it down at a dock in San Francisco, arranging for storing fuel and putting the ship in proper condition for operation, and then arranging for berthing and for loading.

Q. Without any reflection intended on our shipbuilders, what, generally, did you find the condition of the ships to be? Did they require additional work by you?

A. There was hardly a ship we took delivery on, so far as I am concerned, on the Pacific Coast, that, after delivery was taken we didn't have to do additional things in the galley, in the engine room, or something of that kind.

Q. Were these procedures that you have described under your supervision and control, or not?

(Testimony of Herman H. Pierson.)

A. They were under my supervision entirely.

Q. Was that on all of the 20 ships?

A. Yes, sir.

Q. What did you do with a ship after it had been delivered, provisioned, stored and manned? What was its function and your function in connection with it?

A. We had to take it up with the War Shipping Administration to find out who was going to load the vessel, either the Army or the Navy, and then arrange with them for the docking or what facilities they were going to use for docking, and get the ship over to the dock so they could start loading cargo. [23]

Q. What correlation, if any, was necessary to be carried on in any way on behalf of your company and the Government, including the WSA and the Army and Navy?

A. You are in constant touch with them all the time, the WSA, who is naturally your boss; and then you are in close touch or daily touch, many times a day in fact, with the Army and Navy in the movement of your ships?

Q. Was all loading and unloading done on behalf of the Government during the war?

A. It was.

Q. They were your only customers, so to speak?

A. That is right.

Q. Who, particularly, at WSA did you have most of your contact with during the period of the war?

(Testimony of Herman H. Pierson.)

A. Contact regarding the operation of the ship was with Mr. Joe Blackett.

Q. What was his job over there, do you know?

A. I do not recall what his title was over there, but he was in the operating end of it.

Q. Having completed the duties in connection with the delivery of a ship and loading it, then generally what would you say your duties were with respect to that ship, or other ships coming into port or leaving port?

A. Well, you would always have to keep in touch with the Army or Navy on the arrival of ships coming back from the [24] war zone, or wherever they were discharged, and make arrangements for repairs and maintenance, drydocking or inspections, if necessary, and then remanning—in fact, you would have to pay off the old crew first and then re-man, and then supply to get the ship in position for loading again.

Q. Were those things done under your supervision and direction? A. They were, sir.

Q. Did you have an office located in both Los Angeles and San Francisco? A. We did.

Q. Manned by an office staff? A. Correct.

Q. Did that staff, by the way, increase over the 12 to 15 you mentioned before the war to a great number during the war?

A. I would say during the war, at the peak, we were between 30 and 35.

Q. Was the management of the respective offices a part of your responsibility?

A. It was.

(Testimony of Herman H. Pierson.)

Q. Did you have an accounting department to keep track of your income and your disbursements?

A. We did.

Q. Was that your responsibility, too, or not?

A. It was.

Q. Incidentally, did you deal in funds for the company during the war?

A. I signed all the checks—at least, I signed most of the checks. There were other signatures, but any amounts over \$10,000 had to have my signature on.

Q. Did you have unlimited authority to sign checks? A. Yes, sir.

Q. That is, up to the bankroll of the company, I take it? A. That is right.

Q. Did you have a revolving fund at your disposal here?

A. We had a revolving fund of Government money in the amount of \$350,000.

Q. Did you also have a fund of the company at your disposal?

A. We had a revolving fund that I think was \$25,000.

Q. Was dispersal of items from those funds your responsibility or not? A. They were.

Q. Can you tell the court what average amounts of money you dealt with per month, both Government and the company?

A. It varied, depending upon the arrival of the steamers or the amount of bills we paid in the respective funds. In other words, on the Govern-

(Testimony of Herman H. Pierson.)

ment vessels it ran from, say, some months, \$100,000 up to as high as \$250,000.

Q. That was for labor, storing— [26]

A. Labor, paying provision bills, fuel bills, payroll on the ships, repair bills up to a certain amount.

Q. Was the dispersal of those funds your duty?

A. It was under my supervision.

Q. Did you hire and discharge employees, as occasion required? A. I did.

Q. Did you report that to Mr. Suewer?

A. If I fired somebody and hired a replacement, I just notified him of the change and sent the necessary bonding applications, which is the usual thing to do in those cases.

Q. In addition to the ships operated for the Government, were you supervising any other vessels calling in this port?

A. In addition to the owners of the steamers of the De La Rama Company, we were the agent, we had the agency in California of the States Steamship Company, and the Pacific-Atlantic Steamship Company, of Vancouver, Washington.

Q. Were they likewise agents for WSA under a contract similar to yours?

A. They had a similar contract with the WSA as we had.

Q. Did you service—

A. We serviced their ships whenever they were in California ports, which were Los Angeles and San Francisco.

(Testimony of Herman H. Pierson.)

Q. Did that work entail generally the same duties with respect to a relation with the Government, inspection, repairs and provisioning, as you described with respect to the De La Rama [27] Steamship Company?

A. It did. They had a port captain, a port engineer, and a port steward working out of our San Francisco office under my jurisdiction.

The Court: Q. Who fixed the salaries of the people whom you employed? A. Mr. Suewer.

Q. For instance, you fired a man here or a man quit here and you wanted to employ someone else, who would determine that matter?

A. Replacement on the basis of the same salary. We would replace the position on the basis of the same salary.

Q. Suppose you wanted to raise a man's salary?

A. I would have to take that up with Mr. Suewer.

Q. And get his approval first?

A. Yes, sir.

The Court: Go ahead, Counsel.

Mr. Partridge: Q. Getting to that particular phase of it, did Mr. Suewer have occasion to visit your territory from time to time?

A. I think he averaged about two trips a year to California.

Q. Was that both before the war and after?

A. Before the war he used to come out about once a year.

Q. Just one more question before we get to this matter of salaries. Did your duties increase dur-

(Testimony of Herman H. Pierson.)

ing the war years [28] over those devolving upon you before the war, or not?

A. Much greater duties. It involved more time than before the war, because we had a constant follow-up system that we had to follow to keep the vessels moving.

Q. If you could reduce it to percentages, did you do twice as much work, three or four times as much work?

A. I would say the work increased at least four or five times.

Q. The work increased four or five times over what?

A. Greater than it was before the war.

Q. How many vessels, for example, on an average, would touch this port during the war that were under your supervision?

A. Between Los Angeles and San Francisco I would say we had anywhere from five to ten vessels in port at all times.

Q. As distinguished from one a month on your other service? A. That is right.

Q. And one every 21 days on whichever one of those two services it was. At some time or other in 1943, Mr. Pierson, you received an increase in your salary, did you not? A. Yes, sir.

Q. What were you earning before that time?

A. \$600 a month.

Q. Was that the same salary you had been earning before the war?

A. That was the salary I went to work for the

(Testimony of Herman H. Pierson.)

corporation on, when I went to work for them. [29]

Q. Then was that salary increased in 1943?

A. It was.

Q. Do you remember approximately when?

A. I think it was October, 1943.

Q. Was that after discussion with Mr. Suewer?

A. I got authority from him to raise my salary in line with the raise of the employees.

Q. Were other raises then obtained for employees of De La Rama?

A. For all the employees, in fact, because our scale on that was below—in fact, I knew it was below the scale of the other steamship companies, that the other steamship companies were paying.

Q. Did you or did you not call that to Mr. Suewer's attention, the fact that in your opinion the wage scale was lower than that of other companies? A. I did, sir.

Q. Did he authorize this increase of your salary to whatever it was increased? A. He did.

Q. Do you remember the amount of your salary thereafter?

A. The first increase went from \$600 to \$708.

Q. Was an application filed by the company or by you on behalf of the company for authority of the Salary Stabilization Unit of the Internal Revenue Department, to increase— [30]

A. I filed that statement.

Q. At whose direction?

A. By the direction of Mr. Suewer.

Q. Was there any discussion or authority whatsoever sought from anyone other than Mr. Suewer?

(Testimony of Herman H. Pierson.)

A. No.

Q. Or given by anyone other than Mr. Suewer?

A. Not on the wage question.

Q. Did you have other discussions with Mr. Suewer respecting the wages paid by the company to yourself and other key men?

A. I discussed that with them on the basis that we were below what other people were paying, and we would lose our key men if we did not do something about it.

Q. Was that one discussion, or were there more than one discussion?

A. There was more than one discussion.

Q. Did you mention yourself as one of those whom they would lose, unless something were done about it?

A. I naturally did, being a key man.

Q. At least you so considered yourself, did you? All right. You have alleged in your complaint that in February, 1944, you entered into an agreement with Mr. Suewer in behalf of the company. I direct your attention to any discussion you had with Mr. Suewer in February, 1944, particularly regarding your salary, and if it was a part of the discussion, about [31] other salaries?

A. The main discussion, as I recall, at that time was that I brought out the point that our key men were not getting the salaries that were paid by other steamship companies, and that we had to do something to keep our key men and work out some arrangement so they would get comparable salaries, and he spoke up about a bonus which

(Testimony of Herman H. Pierson.)

—call it a bonus, although I didn't consider it would be on the same basis as a bonus. It was more on the basis of working out something to make up the difference of a comparable salary paid by other corporations at the time during the war, and knowing the authority that he had, he was going to recommend certain things to the board of directors, and I felt positive his recommendation would be followed.

Q. What did he say with respect to the things he was going to recommend to the board of directors? Will you tell the court as best you can what he represented to you on that occasion?

A. Do you mean as far as the salary was concerned?

Q. No, you said he was going to recommend. Will you tell the court the substance of what Mr. Suewer told you?

A. He told me that he thought a comparable salary—I mean a bonus worked out on a basis of a comparable salary—in other words, if somebody was getting \$1000 a month and I was getting \$600 a month, he figured we should get \$400 a month during the war period to make up the difference.

Q. You mean an employee or someone outside of your company? A. That is right.

Q. What did he say he would do with respect to having such an additional compensation paid you? What did he say he would do about it?

A. He said he would make the representation and felt sure his recommendation would go—in fact, he expressed himself that he would insist upon

(Testimony of Herman H. Pierson.)

them paying it.

Q. Did he say anything about his own salary and what he intended to do about that at the conclusion of the war?

A. He did. He said he was only drawing the same salary he had drawn before the war, and he would certainly have an understanding and see that he got the proper remuneration.

Q. Did he or did he not assure you his recommendations would be followed by the board?

A. He impressed upon me very strongly that they would be.

Q. What did he say, if anything, with respect to your statement that the salary scale of De La Rama was less than that of other companies in the same field?

A. He appreciated they were below.

Q. Not he appreciated they were below; do you mean he said he appreciated that?

A. He said he believed our scale of wages was below the scale of wages paid by other steamship companies for similar positions. [33]

Q. Did discussions of similar import take place on more than this one occasion, or was that the only time?

A. That was the main discussion, but the thing was discussed on other visits out here.

Q. Generally to the same effect?

A. Along the same lines, correct.

Q. Did you know at that time that the salary scale paid to you and your other key men was less than that paid by similar steamship companies for similar jobs?

A. Yes, sir.

(Testimony of Herman H. Pierson.)

Mr. Aldwell: I think that calls for the conclusion of the witness, your Honor, and is based on hearsay. If he got any direct information or direct evidence, he can give it, but the way your question is worded, counsel, it just calls for a conclusion.

Mr. Partridge: I think that that would be a matter of cross-examination, your Honor, rather than hearsay. I believe he can clearly express his view that he knows the wage scales were higher. The matter of how he knew is one for cross-examination.

The Court: I think that objection is good, Mr. Partridge. He may testify what conversations he had, but when you ask him to tell whether somebody else was paid more or less than he was paid, it would be hearsay.

Mr. Partridge: Very well. [34]

The Court: Unless you have some record, you have to have somebody else testify to that.

Mr. Partridge: Yes, I will produce such testimony.

The Court: Is that of any materiality, what other people were doing? The only question here involved is what, if any, agreement was entered into.

Mr. Partridge: Yes, except it is our position the agreement was this, your Honor, and I believe it has been developed by the testimony thus far: "We will adjust the wages so you men will get wages comparable to those paid by other steamship companies for the same job," without the amount specified, and therefore, if your Honor finds such an

(Testimony of Herman H. Pierson.)

agreement was made, your Honor will have to know what the comparable salaries were.

The Court: The only question then is, is this witness competent to testify to that?

Mr. Partridge: Yes.

Q. Tell me whether or not during the period of the war there was a shortage of competent steamship men. A. There was.

Q. Had you been approached by other steamship companies for jobs? A. I had been.

Q. Was that on more than one occasion during the war?

A. I was approached by several people at different times to [35] find out whether I would be interested in making a move.

Q. Did you leave that company, or did you stay on through with them?

A. I stayed with the company through the war.

Q. Performing the same duties that you described? A. Correct.

Q. Thereafter you resigned from the company, did you? A. Yes, sir.

Q. Did you have any discussion with Mr. Siewer upon the conclusion of the war respecting this bonus and what you propose to do about it when he was on his way to Manila?

A. I talked to him on the day I drove him up to Hamilton Field and he said he would be sure to take that bonus question up and get it settled in Manila.

Q. Thereafter he returned, did he?

A. When he arrived back in Los Angeles from

(Testimony of Herman H. Pierson.)

Manila I talked to him again then and he said he had been given full authority to work out the amounts, and the ones that were entitled to the bonuses.

Q. Did he discuss it any further than that with you? A. No, sir.

Q. Where did you see him then in Los Angeles?

A. In the Biltmore Hotel.

Q. Was he on his way East?

A. He was leaving the same afternoon. It was a Sunday morning [36] I saw him.

Q. Did he purport to be in a hurry and unable to discuss it in detail with you? A. He was.

Q. He told you that, did he?

A. That is right.

Q. At some time or other did you get a bonus or a check of the De La Rama Steamship Company that was entitled bonus, or words to that effect? A. I did.

Mr. Partridge: You have seen a copy of this, Counsel. I have a photostat of it. Do you have any objection to its use?

Mr. Aldwell: Not at all.

Mr. Partridge: Q. I will show you a document purporting to be a photostatic copy of a check—

The Court: If there is no objection, do you wish to offer it in evidence?

Mr. Partridge: Yes.

The Court: Any objection to it?

Mr. Aldwell: None, at all.

Mr. Partridge: May we stipulate that this pho-

(Testimony of Herman H. Pierson.)

Photostatic copy is a photostat of a check of the De La Rama Steamship Company, dated July 14, 1946, and it is in the amount of \$2500, less certain required deductions, required by law, your Honor.

(The document referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 1.)

Statement of Earnings and Deductions for
Employee's Record Covering Pay Period to
and Including Date Shown Below

The De La Rama Steamship Co., Inc.
90 Broad St., New York

Date Jul 15 1946

Issued to: H. H. PIERSON

DEDUCTIONS	
Total Earnings	\$2500.00
F. O. A. B.
Insurance
Withholding Tax	475.00
War Bonds
Hosp. Assn.
[Written in longhand]: Authorized by Board of Directors 7/11/46— Cable No. 40.

Total Deductions	475.00
Amount of Check.....	\$2025.00

Detach before Cashling and Retain This
Statement

PLAINTIFF'S EXHIBIT No. 1

Pay Roll Check

5098 A

No. 3766

THE DE LA RAMA STEAMSHIP CO., INC.
90 Broad Street

PAYROLL ACCOUNT

New York, Jul 15 1946

Pay to the Order of H. H. PIERSON.....\$2025.00
The De La Rama S.S. Co., Inc.....\$2025 & 00 Cts.....Dollars

/s/ R. F. SUEWNER

/s/ [Illegible]

The Marine Midland Trust Company
of New York

210
17 Battery Place

Know Your Endorser—Require Identification

(Testimony of Herman H. Pierson.)

Mr. Partridge: Q. Was that the total amount received by you in addition to the compensation or wages you referred to?

A. Yes, sir.

Q. One more thing. Was your salary raised again in 1945? A. It was.

Q. Do you remember whether that was before or after the wage controls were on?

A. That was while they were still on, because they had to make application to get permission to pay the additional money.

Q. That was raised to what?

A. \$750 a month.

Mr. Partridge: You may cross-examine.

The Court: We will take a brief recess at this time.

(Recess.)

Cross-Examination

Mr. Aldwell: Q. Mr. Pierson, when did Mr. Bradford come with the company?

A. I think it was in March or April in 1941.

Q. When did he leave?

A. February, 1942.

Q. During that time you have already testified he was assistant United States manager, is that correct? [38]

Q. Where was he located?

A. When he first came over, in the Marine Exchange Building in San Francisco, and then moved to 310 Sansome Street.

(Testimony of Herman H. Pierson.)

Q. He was in San Francisco?

A. Yes, that is right.

Q. He was over you, was he? A. Yes, sir.

Q. You testified in some detail, Mr. Pierson, about all of the arrangements that you had to make when you took over a ship under the agency agreement with the Government.

A. I think I could correct you on that, that I supervised those actions.

Q. Very well. I will stand corrected. Those details were no different, were they, from what any other steamship company would be doing at the same time? A. Correct.

Q. In other words, you just carried out the duties that were called for by the general agency agreement with the WSA? A. Correct.

Q. And every other steamship company did the same thing? A. That is right.

Q. And it did not make much difference, did it, whether you had 20 ships, or 100 ships? The procedure was the same? A. That is right.

Q. It was just a question of that much more work, and so far [39] as the increase of work during the war period was concerned, where you testified the work increased four or five times, that was also true of every other company in the business, wasn't it? A. That is right.

Q. So it was just a general industry situation?

A. That is right.

Q. You also testified in addition to the agency agreements which you had with the Government, you also acted as agent for States Steamship and

(Testimony of Herman H. Pierson.)

the Atlantic-Pacific Steamship Company of Vancouver, is that correct? A. Correct.

Q. States Steamship and Pacific and Atlantic Steamship are the same concern in fact, aren't they?

A. Pacific-Atlantic is a subsidiary of the States Steamship Company.

The Court: You mean not the plaintiff individually as agent, but the De La Rama Steamship Company?

Mr. Aldwell: Yes. In referring to "you" I think we can stipulate we are referring to the De La Rama Steamship Company.

Mr. Partridge: At times we are.

Mr. Aldwell: For the purpose of this discussion it simplifies it a little, that is all, your Honor.

Q. This agreement you had with the Government, that was the [40] one that was generally known as the general agency agreement, was it not?

A. Correct.

Q. When you were acting as agent for States and the Pacific-Atlantic, you were really acting under another Government contract, weren't you?

A. We were acting as the—we were the States Line agency, which had a similar general agency contract, the same as the De La Rama Steamship Company had.

Q. And you acted as sub-agent?

A. That is right.

Q. In other words, really you were still acting for the Government, but you just made your accounts through the States? A. That is right.

(Testimony of Herman H. Pierson.)

Q. You testified on your direct examination that you were offered jobs by other steamship companies? A. Correct.

Q. What steamship companies offered you jobs?

A. Well, I can say one who approached me was the Perry Steamship Company.

Q. Did they mention any specific salary they were going to pay you?

A. Their approach was would I be interested in making another connection, and I told them I was very happy where I was.

Q. And you never got down to any details with respect to salary? [41]

A. We never went into further discussion.

Q. What other steamship companies approached you?

A. The States Marine Corporation.

Q. Can you fix any particular date as to when the other companies approached you?

A. I think the States Marine was in 1943, if I remember correctly. I think Perry was in the same year.

Q. Were there any other companies that approached you?

A. No, sir, not that I recall.

Q. Now, you have testified you were paid a salary of \$600 a month starting in 1940, when the De La Rama Steamship Company took over.

A. Correct.

Q. Up until you got this raise in 1943?

A. Correct.

Q. Now, you got a raise in 1943? A. Yes.

(Testimony of Herman H. Pierson.)

Q. You testified on direct examination that that was in October, 1943.

A. I think that was the date.

Q. As a matter of fact, that was retroactive to April 8, was it not?

A. I think it was, yes. The authority was granted in October.

Q. The authority was granted in October?

A. That is right. [42]

Q. It was retroactive to April 8th?

A. I think that was the date.

Q. So in effect you were receiving \$708.33 a month from April 8, 1943 on?

A. That is right.

Q. And in addition you received one month's salary at Christmas time? A. Correct.

Q. Each year? A. That is right.

Q. And that was based upon the amount of your monthly salary at that time? A. Correct.

Q. So your bonus in 1942 was \$600?

A. Yes.

Q. And your bonus in 1943 was \$708.33?

A. I couldn't say definitely, but I imagine that is what it was. I don't know whether they prorated that on the year basis, or not. I don't remember.

Q. In 1944, in any event, your bonus would be \$708.33? A. Correct.

Q. Now, you received another raise in 1945?

A. Yes, sir.

Q. That was the raise to \$750?

(Testimony of Herman H. Pierson.)

A. That is right. [43]

Q. Do you recall when that was effective?

A. I think it was May, if I remember. Is that correct?

Q. It may have been granted in May, but wasn't it effective as of March 17th?

A. There is a possibility. I don't recall right now.

Mr. Partridge: What was that date, Counsel?

Mr. Aldwell: March 17th.

Mr. Partridge: Have you the records so indicating?

Mr. Aldwell: Yes.

The Witness: I know there was a little delay getting permission from the Government agency.

Mr. Aldwell: Q. Particularly in the first there was a considerable delay?

A. Yes, around six months.

Q. As a matter of fact, you had to go down and discuss it with them? A. That is right.

Q. And you also had to discuss the one in 1945?

A. That is right.

Q. You received a Christmas bonus in 1945 also. I presume? A. Yes, sir.

Q. That would be \$750?

A. If they didn't pro-rate it, it was, I agree.

Q. You prepared and signed on behalf of the defendant the applications to the Salary Stabilization Unit for these increases, [44] did you not?

A. Yes, sir.

Q. And you also testified that you discussed

(Testimony of Herman H. Pierson.)

those matters with Mr. Suewer, and with his authorization and approval, you made those applications to the Treasury Department?

A. That is correct.

Q. In addition to the written applications which you made to the Treasury Department, you also had conferences with them, didn't you?

A. Had some what?

Q. Had some conferences with them.

A. Oh, yes—you mean with Mr. Suewer?

Q. No, with the Treasury Department.

A. Oh, yes, had to go up there several times when these applications were put in.

Q. Both on the 1943 raise and the 1945 raise?

A. That is right.

Q. In making these applications to the Treasury Department for these raises you had to give some reasons, did you not, as to why the raises were necessary? A. That is right.

Q. What were those reasons?

Mr. Partridge: I do not think that question calls for the best evidence. If you are asking him what he set forth on the applications, if you have them, he can look at them, [45] but I think it is rather dangerous to try to recall now what was put down.

Can you direct your examination to some other phase while I read these?

Mr. Aldwell: I would just as soon stay on this.

Mr. Partridge: May I have the opportunity to look at it quickly?

(Testimony of Herman H. Pierson.)

Mr. Aldwell: Q. I will show you what purports to be a copy of a letter dated June 18, 1943, addressed to the Treasury Department, Bureau of Internal Revenue, Salary Stabilization Unit, San Francisco, purporting to be signed "De La Rama Steamship Company, Inc., H. H. Pierson," and ask you if that is a copy of a letter which you addressed to them?

A. I would say that is a carbon copy of a letter I did send them.

Q. In this letter you state as follows:

"Furthermore, in comparing our salaries with other steamship companies, we feel it is absolutely necessary that you grant these increases and hold our force together, because on a competitive basis other steamship companies could offer our employees similar positions and pay them higher salaries, as their standard of pay is higher than ours."

Do you recall that statement? [46] A. Yes.

Mr. Partridge: Q. Will you try to answer audibly, Mr. Pierson, so the reporter can get it?

A. Yes.

Mr. Aldwell: Q. Now, this particular application that was covered in this particular letter included, of course, your proposed raise to \$708.33. That was the amount that was asked for, wasn't it?

A. Yes, sir.

Q. And that was the amount that was granted. Did you feel at that time that if you got that raise to \$708.33 you would then be in a comparable position with people in other steamship companies?

(Testimony of Herman H. Pierson.)

A. No, I didn't at the time, but it was the most we figured the board would grant; in other words, we asked for the limit that we felt would be granted.

Q. In your discussions with the Treasury Department, did you have any discussion as to what comparable steamship companies were paying?

A. My stand was they had all the figures of the other steamship companies. They knew what they were paying. They didn't have to ask me what they were paying.

Q. That was the same position you took in 1945 also, was it? A. Correct.

Q. To get down to this discussion you had with Mr. Suewer in [47] February, 1944, as a matter of fact Mr. Suewer volunteered to you, did he not, the information that he would recommend a bonus at the end of the war?

A. After our discussion he admitted he would go after the directors for it.

Q. Did you discuss with him at that time the matter of his authority to either recommend or to pay or to grant this bonus?

A. I felt, in fact I knew what his authority was, as far as his power of attorney—

The Court: Q. He wants to know whether you talked with him about it, not what you felt. What did you say?

A. I discussed it with him, yes.

Mr. Aldwell: Q. What was the nature of that discussion?

(Testimony of Herman H. Pierson.)

A. With his authority they would willingly grant what he recommended.

Q. Didn't he state to you that he did not have any authority to grant any bonuses at that time?

A. At that time he did not. I mean in other words in 1944 he couldn't give us a bonus then.

Q. And he stated to you that he did not have any authority to grant them then?

A. I do not recall whether he made that statement, or not, but he said he could not—at the present time he could not make—he could not pay any bonus then, but he would take it [48] up and felt with his authority and recommendation, the board of directors would grant it.

Q. As a matter of fact, they did grant it, didn't they? A. To the amounts they paid, yes.

Q. In your discussions with Mr. Suewer you did not get down at any time to a discussion of amount, did you? A. Any actual amount?

Q. Yes. A. No.

Q. There was never any mention of it, was there?

A. Not as to whether it would be \$5000, \$2000, no. It was always based upon what would be fair compensation for the work we were doing under the circumstances we were working.

Q. That last statement that you just made was not a part of any discussion you had with Mr. Suewer; that was just your own impression, isn't it?

A. No, no. The thing was discussed with him

(Testimony of Herman H. Pierson.)

on the basis of what we would shoot at. No actual amount was stipulated.

The Court: Q. What did he say that he would do?

A. He said he would recommend to the board of directors, and felt positive they would follow his recommendations.

Mr. Aldwell: Q. Recommend what, Mr. Pierson?

The Court: That is what I am trying to get at.

A. The amount of money that would be paid. It would be on the basis of the salary we should have received, in comparison [49] with what other steamship lines were paying.

The Court: Q. Is that what he said?

A. Make up the difference, correct.

Mr. Aldwell: Q. Did he say he would recommend it on that basis?

A. Yes, sir.

Q. But as far as the amount was concerned, you had to trust in Mr. Suewer, didn't you?

A. That is right.

Q. And you did trust him? A. I did.

Q. To go back for a moment to these other offers you received, Mr. Pierson, who was it in Perry who approached you? What is the name of the individual? A. Charley Perkes.

Q. How about the States Marine?

A. Green, I think his name is.

Q. You testified on your direct examination also, to get back again to this discussion in February,

(Testimony of Herman H. Pierson.)

1944, that the arrangement was that these bonuses would be for key men, and I believe you stated you, yourself, were not specifically mentioned.

A. That I myself, what?

Q. Were not specifically mentioned.

Mr. Partridge: I think you are unintentionally misquoting his testimony. [50]

Mr. Aldwell: I was not intentionally doing so.

Mr. Partridge: I said unintentionally. I think he said including himself.

Mr. Aldwell: That is just what I was coming to, whether that was just his impression.

Mr. Partridge: I did not mean to interrupt you. I am sorry.

The Witness: You mean in the discussion I did not mention to them myself as a key man?

Mr. Aldwell: Q. That is right.

A. In the discussion I said key men. I didn't mention anybody in particular. I just mentioned key men. That would take care of all the key men.

Q. That is what I am trying to get at.

A. Which would include myself, being a key man.

Q. That was your assumption. You are assuming you are a key man?

A. Naturally. If I did not, maybe somebody else would not.

Q. I just wanted to get it straight here. This discussion did not get down to actual individuals?

A. No.

Q. It was just key men as a group?

(Testimony of Herman H. Pierson.)

A. That is right.

Q. And there was no mention whether you, in particular, or McMannus in particular, or Middleton in particular would be [51] getting these bonuses?

A. That is right.

Q. It was just the key men.

The Court: Q. Is that right?

A. Correct.

Q. In other words, Mr. Suewer said the recommendation that he would make for these bonuses to the directors would be for the key men?

A. Correct.

Q. That was the subject of your discussion, is that right?

A. That is right.

Mr. Aldwell: No further questions.

Mr. Partridge: You have handed me, Counsel, copies of the three letters addressed to the Treasury Department, and without questioning the witness on the subject I presume you will stipulate that each of them is a true copy of the communications addressed to the Treasury Department by the De La Rama Steamship Company and signed by Mr. Pierson?

Mr. Aldwell: So stipulated.

Mr. Partridge: You may step down now, Mr. Pierson, and at this time I would like to offer these letters in evidence, and while it may take a moment I would like permission to read them to your Honor, because I think they have a continuity that will be valuable.

The Court: All right. [52]

Mr. Partridge: A letter of June 18, 1943, which I will offer first in evidence.

(The document referred to was thereupon received in evidence and marked Plaintiff's Exhibit 2.)

Mr. Partridge: It is addressed to the Treasury Department, Bureau of Internal Revenue, Salary Stabilization Unit, 100 McAllister Street. May I withdraw that offer at this time? I have a witness here and think we can possibly put him on and finish with him by the noon hour, if it please the court, so I would like to have permission to change my mind.

The Court: Very well.

BENJAMIN H. PARKINSON,

called as a witness on behalf of the plaintiff, and being first duly sworn testified as follows:

The Clerk: Q. State your name to the court?

A. Benjamin H. Parkinson.

Direct Examination

Mr. Partridge: Q. Where do you live, Mr. Parkinson? A. San Francisco.

Q. What is your business or occupation?

A. Secretary-treasurer of Coastwise Line.

Q. Any other office with any other steamship company?

A. I am general manager of the Coastwise Pacific Far East [53] Line, treasurer of the Columbia Basin Terminals and other similar—

Mr. Aldwell: Will you speak a little louder?

The Witness: I am secretary-treasurer of the

(Testimony of Benjamin H. Parkinson.)

Coastwise Line, general manager of the Coastwise Pacific Far East Line, treasurer of the Columbia Basin Terminals, and other similar positions.

Mr. Partridge: Q. Those lines all relate to the steamship business, do they?

A. They do, yes.

Q. Have you been in the steamship business for some number of years? A. I have.

Q. Have you known Mr. Pierson for some number of years? A. I have.

Q. One of the issues raised by the deposition of Mr. Suewer, which is not before your Honor, but I say this in explanation here of the questions addressed to this witness, is that Mr. Suewer said the bonus paid to Mr. Pierson was in part fixed by him, because he considered Mr. Pierson inefficient in certain respects.

Have you known Mr. Pierson, the plaintiff in this case, for sometime? A. I have.

Q. Have you known him in the steamship business, and particularly [54] while he was with the De La Rama Steamship Company?

A. I have, yes.

Q. And before that did you likewise know him?

A. Yes.

Q. Have you been located generally in San Francisco in connection with your steamship career and during it? A. I have, yes.

Q. The Coastwise Lines is domiciled where?

A. 222 Sansome Street.

Q. Where is its home office, San Francisco?

(Testimony of Benjamin H. Parkinson.)

A. That is our home office, yes.

Q. Are you steamship agents?

A. Yes, sir.

Q. For what lines, among others?

A. The United States Lines Company, Pacific Tankers, Pacific Far East Line, Union Sulphur and other lines. Is that enough?

Q. Yes, that seems to be a great many.

Mr. Aldwell: Excuse me, Counsel. I hate to interrupt. Is he talking about San Francisco now?

Mr. Partridge: Q. Are you talking about San Francisco?

A. I am talking about various offices where we may represent those companies. I do not know how detailed you want it, but, for example, we are agents for all of those companies in Seattle and Portland, and our agencies have been in San Francisco and Los Angeles, or wherever those companies have [55] their own offices.

Q. Without repeating, but to satisfy counsel, whom do you represent in San Francisco?

A. Whom do I represent in San Francisco?

Q. Yes, what lines?

A. Well, at the present moment we represent only ourselves in San Francisco.

Q. During the war what lines did you represent?

A. During the war we conducted all of the activities of the United States Lines Company on the Pacific Coast. We organized the Pacific Tankers. We organized the Pacific Far East Line. We organized other companies along that line.

(Testimony of Benjamin H. Parkinson.)

Q. Were you here during the war years?

A. I was here during the war years, yes, sir.

Q. Were you in touch with Mr. Pierson during the war years.

A. I was to the extent that I was in touch with other steamship people in San Francisco.

Q. Will you state to the court whether in your opinion Mr. Pierson was, during the war years, and is, a capable and efficient steamship manager?

Mr. Aldwell: I object to that, your Honor. There is no foundation laid for that.

The Court: I think that is a good objection at this time.

Mr. Partridge: Of course, I qualified the gentleman as having a wide experience in the steamship business. [56]

The Court: I do not think that is the point. His objection is you have to lay some foundation of his knowledge of Mr. Pierson before he would be qualified to testify.

Mr. Partridge: I will try to lay a better foundation.

Q. Are you familiar with the duties of a manager of a steamship line on the Pacific Coast because of your experience in the business, or otherwise? A. I am, yes.

Q. And particularly during the wartime?

A. Yes, sir.

Q. Did you have occasion during the wartime period, before and after, to observe Mr. Pierson in the performance of his duties as Pacific Coast

(Testimony of Benjamin H. Parkinson.)

Manager for the De La Rama Steamship Company?

A. Well, I have never been in his office to observe his operations, but my impression from talking to him and knowing the work that was going through his office, and talking to other steamship people in the same position, I have always had the impression Mr. Pierson was a capable, experienced, and efficient steamship man.

Mr. Aldwell: I move to strike that answer, your Honor, as a conclusion of the witness, hearsay, and again there is absolutely no foundation laid for any such testimony.

Mr. Partridge: Of course, the proof of integrity, the proof of efficiency, proficiency, is based upon intangibles from the very nature of it. [57]

The Court: I don't know whether this sort of testimony would be admissible on the same theory that people's reputations are admissible in evidence. That would be about as far as the witness could go, I suppose. He knows what other people may have said to the plaintiff, and what his opinion of him was from such contacts he may have had with him, but that really is more a question as to reputation than it is as to actual knowledge in detail of the manner of the conduct of the business. For example, I am not wanting to be facetious about it, but Mr. Pierson, for example, may not have accounted for some moneys to his own company and this gentleman might not know anything about it. There are a thousand and one things

(Testimony of Benjamin H. Parkinson.)

that might happen that would detract from the basis of the qualification of the witness to testify as to whether the defendant were an efficient man in the business. I think you would have to have someone who would be more qualified.

Mr. Partridge: I am going to call other testimony in that respect, too, but I am going to adopt the court's suggestion if for nothing more than I think it is an excellent one to save time, and I will ask the witness that very question:

Q. Can you state to the court the reputation that Mr. Pierson bears with respect to his efficiency and proficiency as a manager of a steamship company?

Mr. Aldwell: I am going to object to that one, too, [58] your Honor.

The Court: Technically, I think the objection is good, but whatever the witness might say in that regard would only bear on the weight of the testimony. I will overrule the objection.

Mr. Partridge: Q. Do you understand the question? A. May I have it?

The Court: Q. Did Mr. Pierson have a good reputation as a steamship man in the steamship fraternity, so far as you know?

A. So far as I know, Mr. Pierson has an excellent reputation in the steamship fraternity, and I never heard any criticisms to the contrary.

Mr. Partridge: Q. Mr. Parkinson, in your experience as an executive in the steamship business will you state to the court whether or not you

(Testimony of Benjamin H. Parkinson.)

became familiar and aware, and are familiar and aware of salaries generally paid by the steamship companies on this coast during the wartime period?

Mr. Aldwell: You are restricting this now to his own personal knowledge?

Mr. Partridge: Yes.

A. Well, I am familiar with salaries paid to various positions on the Pacific Coast, but I might say it is confidential information.

Mr. Partridge: Q. We have not gotten quite to the point where we are asking you to divulge any confidential information. [59] Were you familiar generally with the duties of Mr. Pierson as Pacific Coast Manager of the De La Rama Steamship Company during the war years?

A. Well, I fully recognize the duties and responsibilities of the Pacific Coast Manager who is representing a company having a War Shipping Administration War Agency agreement and performing as sub-agent for other companies, from what I have heard here this morning.

Q. You have been in court and listened to Mr. Pierson's testimony on the subject?

A. I have been and did.

Q. On that basis, and based upon your own knowledge of his duties during the war, whatever that may have been, can you state to the court what, in your opinion, is the reasonable value of his services for that period?

Mr. Aldwell: I will object to that, your Honor,

(Testimony of Benjamin H. Parkinson.)

as not within the issues of the case. As I understand counsel's position, the contract is to pay Mr. Pierson a salary for comparable duties in a comparable steamship company. That is not the question counsel is asking the witness. He is asking him what the reasonable value of his services is.

(Discussion of motion.)

The Court: To save time, I will let this testimony go in, and then if it is not competent I will not pay any attention to it, or counsel can make a motion to strike it out. [60]

Mr. Aldwell: It is stipulated it may go in subject to a motion to strike.

The Court: Yes.

Mr. Partridge: Q. Will you answer the question, Mr. Parkinson, or have you forgotten it? It was, in your opinion what is the reasonable value of the services of a person occupying a position of Pacific Coast Manager and discharging the duties that you are aware Mr. Pierson was required to discharge during the war for the De La Rama Steamship Company?

A. I would say a man of his experience, having full charge of operations on the Pacific Coast, as I have heard it testified here, taking delivery of some 24 vessels and serving as sub-agent for others, with two officers and 35 employees, I would say his minimum salary should be \$12,000 a year.

Q. Can you tell the court, from your experience in the steamship business, what comparable

(Testimony of Benjamin H. Parkinson.)

salaries were paid to other employees in the steamship fraternity holding positions comparable to that of Mr. Pierson?

A. Well, as stated a little while ago—

Q. I am not asking you at this time to name any particular one, Mr. Parkinson, but do you know what salaries were paid for comparable jobs?

The Court: Q. He wants to know whether you have a familiarity on that, whether you have knowledge, without disclosing what the salaries were, what salaries were paid. [61]

A. I wanted to say I do not know of any identical position, that those things would run in a sort of bracket rather than as you pointed out, and it depends on what the man's responsibility is, whether he acted of his own knowledge, or had to get direction and things like that. But I know of a salary with lesser responsibility that was getting, say, \$12,000, if that helps any. I know of a salary for considerably less than that responsibility which was \$9,000, and probably with a bonus might have made it \$10,000.

Mr. Partridge: Q. What bracket would you put these salaries within, Mr. Parkinson?

Mr. Aldwell: I move to strike that last answer of the witness on the ground that it is too vague and indefinite.

The Court: I will grant the motion.

Mr. Partridge: That is the portion of it in which he stated the salary that he knows is connected with considerably less responsibility?

(Testimony of Benjamin H. Parkinson.)

Mr. Aldwell: Both of them.

The Court: Yes.

Mr. Partridge: Q. Can you tell the court of your own knowledge what salary bracket, to adopt your description of it, a job of this sort would fall within in the steamship fraternity?

A. Very generally I would say it would fall in a bracket from \$10,000 to \$15,000. [62]

Mr. Partridge: You may cross-examine.

Cross Examination

Mr. Aldwell: Q. Mr. Parkinson, when you say this bracket of from \$10,000 to \$15,000, of what period are you speaking?

A. Well, I would say during the past seven years.

Q. You are not making any allowances for any increases during that time? Do you mean to say it would be \$10,000 to \$15,000 on December 7, 1941 and \$10,000 to \$15,000 on August 14, 1945?

A. My estimate of that bracket can't come that close. I would say somewhere between there, depending on the responsibilities of the man, his capabilities, his past experience, and what would satisfy him. After all, when you get up in that bracket of salaries it is not like a wage for an able-bodied seaman, or like that. You have to take your intangibles and it is very difficult for me even to testify to that.

Q. I realize that as a matter of fact there are a very great number of intangibles, isn't that correct, that go into the factor of fixing steamship companies' executives' salaries, are there not?

(Testimony of Benjamin H. Parkinson.)

A. Yes, sir.

Q. There are such things as family connections that enter into it with some companies?

A. I would say a man's ability to get business, whether it is [63] because he is related to someone, or knows how to do it is a consideration.

Q. There wasn't any question of getting business during the war, was there?

A. Well, I may have misunderstood your question then. You asked me if a man's family relations would affect his salary?

Q. Yes.

A. I can conceive of any number of conditions where it would. I can see where a father might pay a son a salary or something like that—is that what you mean?

Q. That is right, and other factors are involved. There are such things as the ability to obtain certain cargoes; in other words, if a man is in a position, say, to deliver all the cargoes of the United States Steel to a particular company, that is a factor that would be taken into account by an employing steamship company, wouldn't it?

A. Yes, except I would not call that a salary.

Q. Well, we are talking about a bonus. In fixing this \$10,000 to \$15,000 bracket, what steamship companies have you taken into account?

A. I consider that—I am not able to testify to that, because I am not privileged to divulge any specific salaries, and that is as far as I can go, if that much is satisfactory.

(Testimony of Benjamin H. Parkinson.)

Q. In other words, you feel that you are not in a position to [64] disclose any particular companies? A. That is true.

Mr. Aldwell: If that is the case, your Honor, I move to strike all the witness' testimony, if I can't go into the question of what he bases his testimony on.

The Court: You are moving now to strike all of his testimony?

Mr. Aldwell: All of his testimony with regard to salaries, yes, sir.

The Court: I would not want to strike all of his testimony. He gave some testimony as to what he considered the reasonable value was.

Mr. Aldwell: Let me narrow it this way: I move to strike all of his testimony with regard to salaries paid by so-called comparable steamship companies.

The Court: I think that motion is good. I will grant that.

Mr. Aldwell: Q. Are you a friend of Mr. Pierson's, Mr. Parkinson?

A. I beg your pardon?

Q. Are you a friend of Mr. Pierson's?

A. Yes.

Q. Do you meet with him socially at all?

A. I have on occasions, yes.

Q. Did he ever work for you?

A. No, he never has. [65]

Q. So actually you have never been in a position where you could observe the actual work performed by Mr. Pierson for his employer?

(Testimony of Benjamin H. Parkinson.)

A. I have never been in that position.

Mr. Aldwell: No further questions.

Mr. Partridge: I have no other questions. May Mr. Parkinson be excused now from the jurisdiction of this court?

The Court: Yes. We will take a recess until two o'clock.

(A recess was taken until two o'clock p.m.)

Afternoon Session

November 6, 1947, 2:00 p.m.

Mr. Partridge: May it please the Court, during the limited period of time permitted by the noon recess, I have accumulated four cases directed toward the legal proposition that the value of the services of Mr. Pierson, are not being fixed by any particular amount, but left, as the evidence now establishes it was left, at this stage of the proceedings may be fixed by the opinion of people who being familiar with the services, and whose background is in the judgment of this court sufficient to enable them to pass on the value of the services, and they may express their view in that regard based upon their knowledge of the facts and their experience in the trade.

(Discussion.)

The Court: It is a little early, of course, to argue this matter, and perhaps a little dangerous to do that, because of the possibility of getting preconceived views of the matter, but the plaintiff

has not testified to any agreement to pay any salary of any kind. He testified, as I recall his testimony, that the United States Manager said he would get an extra bonus for the key men for their services during the war period. I suppose that might be interpreted to mean compensation for services rendered.

Mr. Partridge: Your Honor will recall that it was testified that it was agreed he would pay such extra bonus or [67] compensation as together with the salary paid during the war would bring the total compensation of the key men up to whatever similar corporations paid in comparable positions, and their fair compensation for the services. I will call Mr. McManus.

JAMES A. McMANUS

was called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

The Clerk: Q. State your name to the court.

A. James A. McManus.

Direct Examination

Mr. Partridge: Q. Where do you reside, Mr. McManus?

A. 241 Twenty-ninth Avenue, San Francisco.

Q. What is your business or occupation?

A. My present occupation is operating manager for Pacific Transport Lines.

Q. And the Pacific Transport Lines is engaged in the steamship business, is it?

A. They are engaged in the steamship business,

(Testimony of James A. McManus.)

operating port service, trans-Pacific.

Q. In the City and County of San Francisco?

A. Correct.

Q. How long have you been in the steamship business? A. Since 1928. [68]

Q. Prior to coming with Pacific Transport Lines, with what company were you associated?

A. I was employed by De La Rama Steamship Company.

Q. For what period of time?

A. From November 1, 1941 to May 30, 1946.

Q. Prior to that time with what company were you associated?

A. I was employed by Williams Dimond Company.

Q. That company, too, is engaged in the steamship business?

A. Agency, yes, steamship business.

Q. How long were you with the Williams Dimond Company?

A. Since 1928, up to the time I went with De La Rama.

Q. While you were with De La Rama was Mr. Pierson there likewise? A. Yes, he was.

Q. Did you go over to De La Rama at or about the same time Mr. Pierson did?

A. No, Mr. Pierson, I believe, preceded me to De La Rama by about two years.

Q. Did you work hand in hand with Mr. Pierson during your period of service at Williams Dimond, or were your duties divergent?

(Testimony of James A. McManus.)

A. At Williams Dimond I had quite a few contacts with him; however, we were in different developments or phases of the business.

Q. When you went over to De La Rama was Mr. Pierson your [69] superior or not?

A. He was my superior. I reported directly to him.

Q. What was your job at De La Rama?

A. Assistant operating manager.

Q. Where were you located?

A. In San Francisco.

Q. Will you tell the court the nature and extent of your contact with Mr. Pierson during your period of service with De La Rama, that is to say, were you in constant contact with him, or what was the situation.

A. I was not only in daily contact, but contact with him innumerable times throughout the business day.

Q. Did you or did you not observe Mr. Pierson in the performance of his duties for De La Rama Steamship Company while you were there with him?

A. Daily.

Q. Will you state whether or not in your opinion he, Mr. Pierson, performed those duties in an efficient and proficient manner?

Mr. Aldwell: I object to that question, your Honor. I do not think any proper foundation has been laid for this witness to testify on that score. He has already testified he was subordinate to Mr. Pierson. I think the proper testimony would be

(Testimony of James A. McManus.)

adduced as to the proper performance of his duties by someone who was his superior. [70]

The Court: This witness says he is now the manager of another steamship company.

Mr. Partridge: Yes, your Honor.

The Court: That objection would be only as to the weight of the testimony. I will overrule it.

Mr. Partridge: Q. The court said you may answer, Mr. McManus.

A. In my opinion, Mr. Pierson was a very capable steamship executive. There were a good many things I did not know about when I was promoted into this position of assistant operating manager, and without his guidance and assistance and recommendations I would certainly have found it very difficult to carry on and perform the work that I did. I have a very high regard for his ability and a very keen appreciation of what he has taught me, and the assistance he gave me.

Q. Are you referring now particularly to the time at which you both worked for De La Rama?

A. That is correct.

Q. Did he, in your judgment, capably perform his duties as manager of that company?

A. So far as I know, yes. He was always available for guidance, help and advice.

Q. Mr. McManus, will you state to the court whether or not you were familiar with the duties of Mr. Pierson as Pacific Coast Manager during the period that you were there with De [71] La Rama?

(Testimony of James A. McManus.)

A. I do not quite understand the question.

Q. I want you to tell the court if it is a fact, or whatever the fact is, rather, that you were or were not familiar with the duties of Mr. Pierson during the period you were both employed by De La Rama Steamship Lines, and during the war, that is to say, were you and are you familiar with them? In other words, did you know what he did?

A. That is correct.

Q. You did know what he did during that period, did you? A. That is right.

Q. Will you tell the court what, in your opinion, the reasonable value of the services for performing such duties was during that war period?

Mr. Aldwell: I object to that, your Honor. There is no foundation laid as to this witness' competency to testify on that point.

The Court: I do not think there is any foundation, Counsel. If I was a salesman at the Emporium, would I be in a position to give expert testimony as to the reasonable value of the floor-walker, or the head of the department? I doubt if there is sufficient basis for that. I think an expert witness would have to be familiar with what the services of men of that type are worth, because of experience in hiring them, or because of the collection of information on that [72] subject or any other basis by which an expert acquires knowledge on that subject, or at least if not an expert, one who is well-versed in that.

Mr. Partridge: May I withdraw the question in an effort to further qualify the witness?

(Testimony of James A. McManus.)

Q. You were assistant traffic manager, did I understand you to say?

A. No, assistant operating manager.

Q. Assistant operating manager for that company. Were you the next in line, so to speak, for the company after Mr. Pierson?

A. At San Francisco?

Q. Yes.

A. In Los Angeles, however, there was the assistant Pacific Coast Manager.

Q. You have told us, as far as your experience was concerned, you were with William Dimond for twelve years prior to coming with De La Rama, were you? A. That is correct.

Q. Then with De La Rama for the number of years you have expressed. During your career with steamship companies, both with Williams Dimond Line and the De La Rama Line, will you tell the court whether or not you became familiar generally with salary scales or wages paid by steamship agencies and steamship lines in this locality? [73]

A. I believe generally I became acquainted — familiar with what most companies were paying generally.

Q. Without regard to the particular job, will you tell the court whether, because of your experience you have recited to us, you were and now are aware of what companies were paying for a position of Pacific Coast Manager of their steamship lines, and for duties similar to those you know were discharged by Mr. Pierson?

(Testimony of James A. McManus.)

A. I do not know that answer specifically, no, the exact amount of what each manager received in the various companies.

Q. I am not asking you for any particular example, but were you generally familiar with the wages paid for such a job? A. Yes.

Q. Will you state to the court, please, what those wages were, or the bracket was, from your experience and knowledge of the subject?

Mr. Aldwell: I object to that, your Honor, on the same grounds I objected to a lot of this type of testimony. Still no foundation has been laid.

The Court: Unless you lay some kind of foundation, I think the objection is good, Counsel.

Mr. Partridge: The difficulties of proof in a matter of this sort are, of course, apparent to your Honor. I realize that is not your Honor's problem, but mine.

The Court: I suppose you could get some executive of some [74] steamship company who could have a familiarity with that subject, a man or woman who would have experience would be able to answer a question like that on the basis of knowledge of what is required, but I do not think I should endeavor to decide this case on the basis of what some former employee of this company said he heard at the time what people were getting in certain jobs in other companies, because that is the worst kind of hearsay.

Mr. Partridge: Isn't that, however, essentially the foundation of any testimony you could get on

(Testimony of James A. McManus.)

the subject unless you approached this problem individually as to each man on a comparable job?

The Court: I think you can produce those who are familiar with this matter. You might even bring reports. You might even be able to demonstrate that in some way without a witness. However, I am up here and not down there. I just do not feel that it is proper for the court to accept what is obviously hearsay testimony.

Mr. Partridge: For the purpose of the record, I will just ask this second question in the face of your Honor's ruling.

Q. Will you tell the court, please, what, in your opinion, was and is the reasonable value of the services of Mr. Pierson rendered to the De La Rama Steamship Company over the period that you were associated with that company in his capacity as Pacific Coast Manager, and before you answer that counsel [75] will undoubtedly want to introduce an objection.

Mr. Aldwell: I object to that for the same reasons we have been making all along, your Honor.

The Court: I am of the opinion that so far as has been developed, this witness is not qualified to give an expert opinion on that. I will sustain the objection.

Mr. Partridge: Very well, you may cross-examine.

Mr. Aldwell: No questions.

Mr. Partridge: That is all, thank you. May Mr. McManus be excused now?

The Court: Very well.

Mr. Partridge: May it be stipulated, Counsel, that copies of letters purporting to be addressed to the Treasury Department, Bureau of Internal Revenue, respectively on the dates June 18th or 19th, 1943, August 10, 1943 and March 16, 1944 are in fact copies of such communications which were sent to the addressee by the company under its authority granted to Mr. H. S. Pierson?

Mr. Aldwell: So stipulated, with the exception of the pencil notations on the last-mentioned letter.

Mr. Partridge: Yes.

Mr. Aldwell: I do not know what they mean.

Mr. Partridge: I will offer the letter of June 18, 1943 in evidence, if it please your Honor, and subsequently I offer the letter of August 10, 1943, and next the letter of [76] March 16, 1944, and ask permission of your Honor to read them at this time.

(The documents referred to were thereupon received in evidence and were respectively marked Plaintiff's Exhibits 2, 3, and 4.)

PLAINTIFF'S EXHIBIT No. 2

“June 18th, 1943

Treasury Department
Bureau of Internal Revenue
Salary Stabilization Unit
100 McAllister Street
San Francisco, California
Attention: Deputy Commissioner

Gentlemen:

We are making an appeal to you as to the decision rendered by the Regional Head of Salary Stabilization Unit in his letter to us of June 7th, PD-2, in reference to our application of April 8th (not April 9th as he mentions in his letter) for certain salary increases.

After reviewing his refusal of our application, it seems to be based on lack of sufficient evidence as to our operations so we are attaching herewith a schedule showing the number of steamers handled by us per month during 1941, 1942 and the first five months of 1943.

In explanation of this schedule we want to bring out that in 1941 we had vessels arriving from the Orient at Los Angeles where they discharged from 300 to 500 tons of cargo and then proceeded to the Atlantic Coast, [77] and on their westbound voyage they arrived at Los Angeles and loaded possibly 400 to 600 tons of cargo then proceeding to San Francisco where they would load an average of from 1000 to 1500 tons of cargo, and we would

produce only a small amount of green supplies to be put aboard ships. Starting in 1942 the situation changed considerably because we started taking delivery of vessels from the shipyards and they have to be manned, provisioned, fueled and alterations made; and when a vessel returns after completing a voyage, it is a case of paying off the crew, remanning, reprovisioning and attending to voyage repairs as well as drydocking when necessary. In other words, in 1941 it was a case of booking a number of tons of cargo, and in 1942 and 1943 we have had the complete operation of the vessels, which naturally is a greater responsibility and entails considerable more labor.

We now have to request some additional increases because of the greater number of steamers we are handling, which necessitates increasing our force. At the same time we have made some changes in our organization, as follows: (1) J. O. McManus, Port Superintendent, has been made the Assistant Operating Manager at San Francisco, and we wish to cancel our previous request for him and now increase his salary from \$4200 per year to \$4950 per year; (2) E. J. Hult, Chief Clerk at \$2700 per [78] year, has been promoted to Assistant Purchasing Agent and we want to increase his salary to \$3190 per year; (3) H. K. Fox, Bookkeeper, has been promoted to Assistant Accountant, and we want to increase his salary from \$3000 a year to \$3300 a year.

Our requests in our previous application, as well as the last two persons mentioned above, make up

the executive and administrative employees of our organization.

You can see from the accompanying chart showing the number of steamers handled in the ports of San Francisco and Los Angeles that in the first five months of 1943 we have handled almost as many vessels as we did in all of the year 1942. Furthermore, in comparing our salaries with other steamship companies, we feel it is absolutely necessary that you grant these increases to hold our force together because on a competitive basis other steamship lines could offer our employees similar positions they now hold and pay them higher salaries as their standards of pay are higher than ours.

If there is any further information required, kindly advise us, in fact, the writer would appreciate it if a conference could be arranged with you to discuss the entire situation and possibly clear up points that may not be included in this appeal.

Yours very truly,

THE DE LA RAMA STEAMSHIP
CO., INC.

H. H. PIERSON.

HHP:JK Encl''

[79]

STEAMERS HANDLED BY THE DE LA RAMA STEAMSHIP CO., INC., IN SAN FRANCISCO AND LOS ANGELES

	1941		1942		1943	
	San Francisco	Los Angeles	San Francisco	Los Angeles	San Francisco	Los Angeles
January	2	5	2	2	4	1
February	2	4	1	2	4	4

	1941		1942		1943	
	San Francisco	Los Angeles	San Francisco	Los Angeles	San Francisco	Los Angeles
March	2	2	4	1	4	
April	2	5	4	3	8	3
May		1	2	2	11	9
June	3	5	5	1		
July	2	3	2	3		
August	1	4	2			
September		1	1	2		
October	2	4	3	1		
November	2	1	2	2		
December	1	2	2	1		
Totals	19	37	30	20	31	17

[Printer's Note: The above table was attached to Plaintiff's Exhibit No. 2.]

PLAINTIFF'S EXHIBIT No. 3

“August 10th, 1943

Treasury Department
Bureau of Internal Revenue
Salary Stabilization Unit
100 McAllister Street
San Francisco, California

Gentlemen:

In reference to our letter of April 8th also June 18th, we wish to give you the additional information requested, and think we should begin by reviewing each individual separately.

As we stated before, this corporation started in business in the United States on July 1st, 1940, therefore in question No. 8 of the application form we will have to use that date instead of January 1st, 1940.

H. H. Pierson: Salary on July 1st, 1940, was \$7200 per year. He has had no increase since that

date and our request now is to increase him, effective April 1st, 1943, to \$8500 per year. The reason for this request is that he has had no increase since July 1st, 1940, and on March 1st, 1942, he assumed the duties of his superior, the Assistant General Agent, who joined the Army Transport Service, and carried on that position as well as his position as Pacific Coast Manager. The increase requested does not bring his salary up to the salary that was paid the Assistant General Agent.

Harold Norton: Salary on July 1st, 1940, was \$3300 [80] per year, increased on October 1st, 1941, to \$3600 per year, and we are now requesting, effective April 1st, 1943, to increase his salary to \$4390 per year (our first application showed \$4280, which is in error). This is the increase that is due him based on the firm's usual procedure of making yearly increases.

E. J. Hult: Salary on July 1st, 1940, was \$1860 per year, was increased on May 1st, 1941, to \$2100 per year, and October 1st, 1941, to \$2700. We are now asking for permission to increase him, effective April 1st, 1943, to \$3190 per year. This is also based on the firm's usual procedure of yearly increases, also because of his increased duties from being promoted from the position of Chief Clerk to Assistant Purchasing Agent.

H. Middleton (Los Angeles Office): On July 1st, 1940, was receiving \$4500 per year, increased on October 1st, 1941 to \$4800. We are now asking permission to increase him, effective April 1st, 1943, to \$6000 per year, based on the firm's policy

of yearly increases as well as his recent promotion from the position of Los Angeles Manager to Assistant Pacific Coast Manager.

J. O. McManus: His employment with the firm started December 1st, 1941, at \$3000 per year, as Assistant to the Dock Superintendent. He was promoted to Dock [81] Superintendent. He was promoted to Dock Superintendent on October 1st, 1942, and his salary increased to \$4200 per year. We have now promoted him to the position of Assistant Operating Manager and request that we be permitted to increase his salary, effective April 1st, 1943, to \$4950 per year.

H. J. Burns: He started with the firm in San Francisco on December 15th, 1941 at \$4200 per year, and we request permission to increase his salary, effective April 1st, 1943, to \$4950 per year. Mr. Burns is Pacific Coast Accountant and we feel the increase is due him under the firm's policy of yearly increases, plus his present increased responsibilities.

As regards our previous request for increase for H. K. Fox, we wish you would withdraw that request.

To give you more information in regards to our increased business, we wish to state that on the schedule of steamers handled by us, which we previously forwarded to you, you can enter June, 1943, we handled nine vessels in San Francisco, ten vessels at Los Angeles, and in the month of July, six in San Francisco and three at Los Angeles. The figures tabulated show that for the first

six months of 1943 we have done 30 percent more business than we did in the entire year of 1942, and with the prospects of our business increasing even more than in the first six months, [82] we will do better than 160 percent greater business in the year 1943 than we did in 1942.

In addition to the increase of business taking in consideration the number of vessels concerned, we want to bring to your attention that in the present operations, which you know is done for account of the U. S. Government, the labor in connection with the handling of vessels has increased at least five times to what it was prior. This is caused by the war conditions, and the numerous reports requested by the War Shipping Administrator, whom we work directly under, and the Army, Navy and Coast Guard. As an example today in bunkering a ship, which ordinarily would take one operation of contacting the fuel oil company, we now have to contact the fuel company, plus the Army or Navy, whichever is involved. In signing on a crew, before it was a case of getting the Shipping Commissioner and signing the crew on—now in addition to the Shipping Commissioner we have to make out crew reports and submit them to the Army, Navy and Coast Guard, which is something we never had to do before. In connection with the purchasing of merchandise, we must get the necessary signatures on invoices and forms filled out as requested by the Government, which takes almost double the time it did in the past.

From the above you can see that with the in-

creased [83] business and responsibilities, and our competitive situation in the labor market of the steamship fraternity, our employees are entitled to these increases. In addition, the firm finds they have to make these increases in order to hold the employees, and know if you will check our scale of wages against those paid by other steamship companies, you will find they are below the salaries paid by other steamship companies for similar positions. Also, the majority of the steamship fraternity have been paying anywhere from 10 to 15 percent high cost of living increases over their basic salaries, which are higher than ours, so when you take this into consideration, our employees are entitled to the same thing. In our request for increases in most cases we are only giving this high cost of living increases, which we feel the employees should have in addition to the increases other steamship companies have granted. However, we know that being a smaller institution we cannot meet the salaries being paid by other larger steamship companies.

We want to officially notify you at this time that we went on a 48-hour week schedule effective June 16th, 1943, at the request of the War Manpower Commission, and we have just been granted permission by our main office in New York to ask for the following scale of increases to take care of the additional eight hours per week that the employees are working. On salaries \$2400 per year [84] or less, we are paying 30 percent to take care of the time and a half for the additional eight hours, and on salaries from \$2401 to \$3000 per

year, we are asking permission to pay 20 percent to take care of the additional eight hours, and above \$3001 per year we request permission to pay \$600 per year to cover the additional eight hours.

If there is any further information desired we shall be glad to furnish same. Hoping that you will give this your immediate attention and favor us with a prompt reply, we remain,

Yours very truly,

THE DE LA RAMA STEAMSHIP
CO., INC.

H. H. PIERSON.”

HHP;JK

PLAINTIFF'S EXHIBIT No. 4

“March 16th, 1945

Salary Stabilization Unit
Treasury Department
Bureau of Internal Revenue
Balboa Building, 593 Market Street
San Francisco 5, California

Attention: Mr. Milo W. Bean

Gentlemen:

We are attaching form SSU-1 requesting salary adjustments and would appreciate it if you would approve these adjustments retroactive to March 1st, 1945.

We base these increases on increased business, parity [85] of similar positions of other steamship

lines and salaries required for replacement of necessary.

In 1941 we owned three motor vessels of our own, and on March 1st, 1945, we have two motor vessels of our own and eighteen steamers allocated to us to operate as General Agents for the U. S. Government, War Shipping Administration. In addition, we act as sub-agent for the Pacific-Atlantic Steamship Co. of Vancouver, Washington, States Marine Corporation of New York and R. A. Nicol & Co., Inc., New York, and these three companies are General Agents for the U. S. Government, War Shipping Administration. We handled in California Ports in 1941, 21 steamers; in 1942, 54 steamers; in 1943, 144 steamers; in 1944, 149 steamers; and the outlook for 1945 is that we will handle more vessels than in 1944.

Our cash disbursements for 1941 were \$1,495,790; in 1942, \$1,766,005; in 1943, \$2,955,007; and in 1944, \$4,389,323; which shows a healthy increase each year. In addition, the number of our employees has increased since January, 1941, from 11 to 30 at the present time.

Anticipating a prompt reply, we remain,

Yours very truly,

THE DE LA RAMA STEAMSHIP
CO., INC.

H. H. PIERSON,
Pacific Coast Manager."

Mr. Partridge: Now, has the original deposition of Mr. Suewer been returned to the clerk of this court?

The Clerk: It is on file, yes.

Mr. Partridge: I would like to offer that in evidence on behalf of the plaintiff, if it please the court.

The Court: I glanced through it at the noon recess, so I would be familiar with any matters counsel might want to bring up in connection with the matter.

Mr. Partridge: Yes, it was not my intention to impose a reading of it upon the court.

The Court: Who took the deposition?

Mr. Aldwell: We did, your Honor.

The Court: I suppose you have no objection to the deposition?

Mr. Aldwell: No, none at all, except we were going to put it in, ourselves. We had some objections to some of the questions on cross-examination, however.

The Court: Why don't you consider the deposition having been read, except those objections, and then I will rule on them if you wish, either now or at some later time, whatever way counsel wishes to handle the matter.

Mr. Partridge: That would seem to be most expeditious. It may be deemed offered in evidence subject to any objections either one of us might make, on which the court will rule in an orderly procedure. [87]

The Court: You can make a list of them, either

now or at a later time, and we will just go over the objections and then it will not be necessary for you to read the whole deposition.

Mr. Aldwell: That is satisfactory, your Honor.

The Court: Is that all right?

Mr. Partridge: Yes, your Honor.

Mr. Aldwell: Before you go any further, Mr. Partridge, I would like to clear up one thing with respect to that last exhibit you read. There was a statement about 144 to 149 vessels. The court may get the impression that means entirely different ships. Actually, what it means is that there were 144 vessels handled over the course of the year. They may be the same vessel two or three times.

Mr. Partridge: That is right. A ship would come in three or four times.

Mr. Aldwell: In view of the previous testimony with respect to 21 vessels, I did not want the court to get the impression that they had a terrific increase.

Mr. Partridge: The only parts of the deposition that I want to remind the court of at this time are these simply, your Honor: The comparative salaries of the so-called key men and the bonuses granted to each—

The Court: I read that part of the deposition. Who is Griffin? That was unclear to me. [88]

Mr. Aldwell: Griffin was the assistant to Mr. Siewer in New York.

The Court: Oh, he was a New York man?

Mr. Aldwell: That is right.

The Court: Bradford was the assistant to the manager who was out here?

Mr. Aldwell: Yes. Mr. Bradford was with the company only a short time.

The Court: I just wanted to get these names clear in my mind. McManus, who testified here, was the assistant in San Francisco under Mr. Pierson, and then the other gentleman in Los Angeles, Middleton—those are the names that were mentioned in connection with those salaries and bonuses?

Mr. Aldwell: I think the hierarchy went something like this: Suewer, Griffin, Pierson, Middleton, McManus.

The Court: Of course, there was a man out here, too, for a while, you said.

Mr. Aldwell: That was Bradford.

The Court: He was higher than Pierson.

Mr. Aldwell: Oh, yes.

The Court: But that was only for a short period of time.

Mr. Aldwell: He left in the beginning of 1942.

The Court: Griffin was the assistant in New York.

Mr. Aldwell: That is right.

Mr. Partridge: Counsel will correct me if I am wrong [89] but in order to straighten out Bradford and Griffin in your Honor's mind, it is my understanding Bradford and Griffin really had the same job, one succeeded the other, but Bradford, it happened, was stationed in San Francisco, and he went over in the Services and he was replaced by Grif-

fin, who was stationed in New York. Is that not correct?

Mr. Aldwell: I do not know the answer to that, myself. I am just asking Mr. Middleton, here, whether he can throw any light on it.

Mr. Partridge: Would your Honor care to hear more brief testimony from Mr. Pierson on that?

The Court: I thought you would like to clear that up.

Mr. Partridge: Yes, I would.

HERMAN H. PIERSON,

recalled as a witness, and having been previously sworn, testified as follows:

Direct Examination

Mr. Partridge: Q. Mr. Pierson, was Mr. Bradford employed by the defendant during the time you were there?

A. The De La Rama Steamship Corporation.

Q. What was his job?

A. He was the No. 2 man in the United States.

Q. Was that while Mr. Griffin was with the company, or not?

A. Mr. Griffin was with the company in New York. [90]

Q. Then there was Mr. Suewer, who was in charge, Mr. Bradford, who was No. 2 man, and he was located where?

A. In San Francisco.

Q. Was he your superior? A. He was.

Q. Was he the Assistant United States Man-

(Testimony of Herman H. Pierson.)

ager referred to in the letter addressed to the Salary Stabilization Unit? A. Correct.

Q. Who went into the Transport Service?

A. That is right.

Q. When did he go into the Transport Service?

A. February, 1942.

Q. Did anyone replace him in this area?

A. Nobody replaced him.

Q. Who took over his duties? A. I did.

Q. Was Mr. Griffin at all times stationed in New York? A. Correct.

Q. Was he inferior to Mr. Bradford while Mr. Bradford was with the company?

A. That was my impression, that Mr. Bradford was No. 2 man, Mr. Griffin would be No. 3 man, or assistant to the No. 1 man in New York.

Q. And who would be the No. 4 man?

A. That would be myself. [91]

The Court: Q. You say Mr. Bradford left in February, 1942. How long had he been there?

A. Came in I think March or April, 1941.

Q. He was less than a year in San Francisco?

A. That is right.

Mr. Partridge: Q. Mr. Griffin was promoted, so to speak, to No. 2 man?

A. That is right. There was nobody who replaced him. Bradford was never replaced on the Pacific Coast.

Q. What about the comparative volume of traffic on the Pacific Coast and on the East Coast? Did one have more than the other, were they equal, or what was the situation?

(Testimony of Herman H. Pierson.)

A. We handled more steamers on the Pacific Coast than they did on the Atlantic Coast.

Mr. Partridge: You may cross-examine.

Cross Examination

Mr. Aldwell: Q. When Mr. Bradford came here, he came from the Philippines, did he not?

A. Yes, sir.

Q. He was sent over by the home office in Manila? A. That is right.

Q. He was stationed here in San Francisco all the time, wasn't he? A. Correct.

Q. As you testified, he was No. 2 man in the United States? [92] A. That is right.

Q. What effect did that have on your position there?

A. I just carried on as Pacific Coast Manager under him.

Q. In other words, he directed your activities?

A. That is right.

Q. You sort of got pushed down one notch, and when he left you went back up a notch, is that right? A. That is right.

Q. When Mr. Bradford left, that left Mr. Griffin as No. 2 man? A. That is right.

Q. And, of course, the New York office was always over the Pacific Coast offices?

A. Correct.

Q. And everything you did you were subject to direction and veto, or what have you, from Mr. Suewer or Mr. Griffin? A. That is right.

Mr. Aldwell: That is all.

Mr. Partridge: That is all. Do you waive any objection to the photostatic copy?

Mr. Aldwell: Well, I waive any objection, yes.

Mr. Partridge: I will offer in evidence, your Honor, a photostatic copy of a document which purports to be a certificate of resolution of the De La Rama Steamship Company, adopted at a special meeting of the Board of Directors held [93] in the Philippine Islands upon the 7th day of July, 1940, according to its terms. There are some certifications by the secretary that are attached, but the meat of it is in the resolution, itself. The resolution confers upon Mr. R. F. Suewer, or his substitutes, all powers granted previously to him under a resolution of July 1, 1940, confirms them and ratifies them, and I think may be fairly construed to provide that in the event of the outbreak of war, Mr. Suewer is constituted the sole agent and attorney in fact for the company, to use the language of the document, “* * * he is hereby authorized to operate, conduct, manage, charter, rent, hire, and in anywise handle the vessels of the corporation which may be found within the territorial waters of the United States or its possessions, or within the reliable reach of the U.S.A. firm’s organization, to sail, enter, and clear the said vessels upon their voyages inside the territorial waters of the United States or its possessions, or to foreign countries; to make and enter into any and all agreements, contracts, arrangements, relative to the operation of the said vessels, to the maintenance, conservation and repair of same, to

the manning of said vessels, to the transportation of cargo and/or passengers on board the same, to sell, transfer, or convey the said vessels and/or change their registry if necessary, and deposit the proceeds thereof on behalf of the corporation; to collect, receive, demand, recover and receipt for any and all moneys [94] due, owing, payable for or on account of the said vessels, their operation or management," and it goes on and recites that should conditions arise wherein the attorney-in-fact would be unable to communicate with the officers of the corporation, he can sign checks, and, I think we can fairly state, do just about anything the company would do.

The Court: You say he has a right to hire help and that sort of thing? Is that specifically mentioned?

Mr. Partridge: No, it is not specifically mentioned.

The Court: Of course, he had the power to hire crews of ships.

Mr. Partridge: I think when the time arrives for argument in this case it can be shown the power-of-attorney conferred that, but in answer to your Honor's question, it does not specifically mention it. I will offer this.

(The document referred to was thereupon received in evidence and marked Plaintiff's Exhibit 5.)

PLAINTIFF'S EXHIBIT No. 5
The De La Rama Steamship Co., Inc.
City of Iloilo, Philippines

CERTIFICATE OF RESOLUTION

Know All Men By These Presents:

That I, Eliseo Hervas, Secretary of The De La Rama Steamship Company, Inc., a corporation organized and existing under the laws of the Commonwealth of the Philippines, do hereby certify that at a special meeting of the Board of Directors of the said corporation, held at the City of Iloilo, Province of Iloilo, Philippines, on the seventh day of July, 1940, at which a quorum was present, a resolution of the following tenor was approved:

“Resolved, that all the powers conferred on Mr. R. F. Suewer or his substitutes under the Resolution of July 1, 1940, are hereby confirmed and ratified in so far as the said powers are not in conflict or inconsistent with the powers herein conferred.

Resolved, further, that in case Mr. R. F. Suewer should decide to dismiss the accountant of the New York Office whom he is authorized to appoint under the Resolution of July 1, 1940, and the corresponding approval of the appointment of a new accountant may not be obtained from the principal office of the corporation in the Philippines, the corresponding power of nominating or appointing a new accountant shall be vested in Mr. Foley or his substitute or substitutes as herein provided.

Should it become necessary for Mr. R. F. Suewer or his substitutes, as hereinafter provided, to open overdraft accounts or obtain banking facilities in excess of any amount that may have been previously prescribed by the principal office of the corporation in the Philippines or under the limitations imposed in the Resolution of July 1, 1940, and should it be impossible by all means to communicate with the principal office in the Philippines for the purpose of securing approval either for the opening of such overdraft account or for obtaining banking facilities in excess of the amount already previously prescribed, then such approval may be given by Mr. Foley or his substitute as herein provided.

In case Mr. R. F. Suewer or his substitutes, as hereinafter provided, should not be able to communicate with the principal office of the corporation in the Philippines due to the then prevailing conditions, he is hereby authorized to operate, conduct, manage, charter, rent, hire, and in any wise handle the vessels of the corporation which may be found within the territorial waters of the United States or its possessions, or within the reliable reach of the U.S.A. firm's organization, to sail, enter, and clear the said vessels upon their voyages inside the territorial waters of the United States or its possessions or to foreign countries; to make and enter into any and all agreements, contracts, arrangements, relative to the operation of the said vessels, to the maintenance, conservation and repair of the same, to the manning of said vessels, to the

transportation of cargo and/or passengers on board the same, to sell, transfer, or convey the said vessels and/or change their registry if necessary, and deposit the proceeds thereof on behalf of the corporation; to collect, receive, demand, recover and receipt for any and all moneys due, owing, payable for or on account of the said vessels, their operation or management.

Should conditions arise whereby communication with the principal office of the corporation in the Philippines is rendered impossible or unreliable, and it should be necessary for Mr. R. F. Suewer to draw against Account No. 2 with the Marine Midland Trust Co., New York, Mr. R. F. Suewer shall obtain the concurrence of Mr. Foley or his substitute as herein provided for the counter-signature of the check or checks, the said Mr. Foley or his successor being fully authorized to pass upon the merits of each and all withdrawals before granting his counter-signature on the check or checks.

In case of death or incapacity, legal or otherwise, of Mr. R. F. Suewer, and communication with the main office of the corporation in the Philippines is rendered impossible or unreliable due to the then existing or prevailing conditions, the powers herein conferred and those conferred on Mr. R. F. Suewer under the Resolution of June 1, 1940, in so far as they may not be inconsistent with this resolution, shall be vested in a successor or successors to be nominated by the then incumbent of the position of President of Messrs. Macleod & Co., Inc., New

York. In case of death or incapacity, legal or otherwise, of Mr. Foley, and communication with the Philippines is rendered impossible or unreliable due to the then prevailing conditions, the powers now conferred on him as well as those conferred on him in the resolution of June 1, 1940, shall be vested in his successor or successors as Manager of the Philippine National Bank, New York, or in default thereof in the incumbent of the office of Philippine Resident Commissioner in Washington, D. C.

The original of this resolution shall be held in escrow by the Philippine National Bank of New York, and shall be released by Mr. Foley or his successor or by the Philippine Resident Commissioner in Washington, D. C., as the case may be, only when the conditions and circumstances contemplated herein should arise, that is, that the United States and/or the Philippines become involved in any international conflict and/or communication with the Philippines is rendered impossible or unreliable, and shall be exercised by Mr. R. F. Suewer or his substitutes only upon delivery unto him or his substitutes of the original of this resolution.

Hereby giving and granting to said R. F. Suewer or his substitutes full and ample power and authority to do and perform all acts and things reasonably necessary or proper for the due carrying out of the said powers according to the true tenor and purport of the same, to the same legal and binding effect as the corporation might or could do under and by virtue of these presents,

and hereby confirming and ratifying all that the said R. F. Suerer or his substitutes may lawfully do or cause to be done under and by virtue of these presents.”

In Witness Whereof, I have hereunto set my hand and caused the seal of the corporation to be affixed at the City of Iloilo, Province of Iloilo, Philippines, this 11th day of July, 1940.

ELISEO HERVAS,
Secretary, The De La Rama Steamship Company,
Inc.

United States of America,
Commonwealth of the Philippines,
Province of Iloilo, City of Iloilo—ss.

Eliseo Hervas, being first duly sworn, deposes and says:

I am the Secretary of the corporation known as The De La Rama Steamship Company, Inc., and in my capacity as such Secretary signed the foregoing certificate and sealed it with the seal of the said corporation; I have read the contents of the said certificate and the facts therein stated are true and correct of my own knowledge.

ELISEO HERVAS,
Secretary, The De La Rama Steamship Company,
Inc.

In the City of Iloilo, Province of Iloilo, Philippines, on this 11th day of July, 1940, before me, a Notary Public for and in the Province of Iloilo

personally appeared Mr. Eliseo Hervas, in his capacity as Secretary of The De La Rama Steamship Co., Inc., and made oath to me that the foregoing is a true and correct copy of the resolution approved by the Board of Directors of the said company on the seventh day of July, 1940, and acknowledged to me that the foregoing certification is his free and voluntary act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal at the place and date first hereinabove written.

/s/ TOMAS CONCEPCION,
Notary Public.

Until December 31, 1940.

Doc. No. 132. Page No. 36. Book No. XI. Series of 1940.

Court of First Instance, Province of Iloilo,
7th Judicial District

City of Iloilo

Province of Iloilo

Commonwealth of the Philippines

I, Juan Jamora, Clerk of the Court of First Instance, 7th Judicial District, Province of Iloilo, Commonwealth of the Philippines, do hereby certify that Attorney-at-Law Mr. Tomas Concepcion, who signed the annexed instrument, was, at the time of so doing, a Notary Public in and for the said province, duly commissioned and sworn, according to the laws of this Country; that I am

acquainted with his handwriting, and that his signature to the annexed instrument is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court, this 11th day of July, 1940, A. D.

JUAN JAMORA,

Clerk of Court of First Instance, 7th Judicial District, Province of Iloilo.

This is to certify that Mr. Juan Jamora is the Clerk of Court of First Instance, 7th Judicial District, Province of Iloilo, Commonwealth of the Philippines; that his signature above appearing is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court, this 11th day of July, 1940, A. D.

CONRADO BARRIOS,

Judge.

Court of 1st Instance of Iloilo, Province of Iloilo,
7th Judicial District.

Office of the President of the Philippines
United States of America,
Commonwealth of the Philippines,
City of Manila—ss.

I, Jorge B. Vargas, Secretary to the President of the Philippines, do hereby certify that Conrado Barrios, whose name appears signed to the attached certificate, was at the time of signing the

said certificate, Judge of First Instance, Iloilo, Philippines, duly appointed and qualified and was, as such official, duly authoriezd by the laws of the Philippines to sign, the same, and that the full faith and credit are and ought to be given to his official acts; and I Further Certify that I am well acquainted with his handwriting and verily believe the signature and seal affixed to the said certificate are genuine.

In Witness Whereof, I have hereunto set my hand at Manila, Philippines, this 21st day of August, A. D. 1940.

JORGE B. VARGAS,
Secretary to the President.

Mr. Partridge: Your Honor, that is all the evidence I have at this time. I must be candid with the court in saying I am somewhat at a loss in proving the reasonable value of these services. I feel upon a construction of Mr. Pierson's testimony and the nature and extent of the activities of Mr. Suewer, the tentative testimony before your Honor on reasonable value, which is subject to a motion to strike, the marked comparison between the bonus and salaries of Mr. Suewer [95] and Mr. Pierson, the fact that similar bonuses were paid to inferiors to Mr. Pierson, the law of the case, there is a great deal of merit to Mr. Pierson's contention that he is entitled to the fair value of his services, and for that reason I ask permission of this court

to adjourn until the next convenient time of the court in an effort to be prepared to prove within the rulings of your Honor such testimony as will have a bearing or will be of assistance to your Honor in reaching a just conclusion on that subject.

The Court: Have you some evidence to put on this afternoon?

Mr. Aldwell: No, your Honor, I have not.

The Court: What did you want to produce further? Some testimony by some experts as to what the reasonable value of the services of the Pacific Coast Manager of some comparable steamship company is?

Mr. Partridge: Yes, your Honor. Of course, there is evidence in this record from which your Honor could reach a conclusion without additional testimony.

The Court: Of course, on the testimony that the plaintiff has offered, assuming there is a binding agreement here, I think the plaintiff would be entitled to something more than he got, but as I have heard the whole case, gentlemen, it is a question of fact as to what the nature of this agreement, if there was an agreement, was. Assuming there was a binding agreement, to pay at the conclusion of the war, an additional amount to [96] represent what might be said to be the proper comparative value of the plaintiff's services, he might be entitled to something more than the \$2500 he got. He would be in a very difficult twilight zone there because it might be \$500 more, or \$1000 more, or a few thousand dollars more, and it would be very

difficult to arrive at a figure in that regard because of the difficulty that the court would have in trying to figure out just what kind of a job he had, how much it was reasonably worth, and I think I would have to go down and watch the operations of this company for a while before I would be in a position to determine that. It is a subject that would be most difficult to cover by expert testimony.

(Discussion.)

The Court: Suppose we take a brief recess, and each of you give your ideas about the theory of the liability in this case.

(Recess.)

Mr. Aldwell: Your Honor, during the recess Mr. Partridge and I discussed the possibility of settlement, and we have reached a tentative agreement on the figure. It is now too late in New York to get hold of Mr. Suewer on the phone. He would have to approve it, of course. I do not know whether he would agree to settle, but our suggestion is that we suspend operations at this point and continue it to a date satisfactory to your Honor, and if we do not reach a settlement, [97] proceed at that point.

The Court: That is perfectly agreeable to the court. What time would you suggest with reference to another date? How long would it take you?

Mr. Aldwell: We will get him on the phone the first thing in the morning.

The Court: Would you want to put it over temporarily to Monday?

Mr. Partridge: That would be convenient.

The Court: If you are going to have to have a further hearing in the matter, I would rather go ahead with it sometime on Monday, because of the jury trials coming along. Will that be agreeable?

Mr. Partridge: That will be agreeable.

The Court: Suppose we continue the matter until 11 o'clock Monday morning?

Mr. Aldwell: Very well, your Honor.

The Court: If you dispose of the matter among yourselves, notify the clerk.

Mr. Partridge: As soon as we know we will let the clerk know so your Honor can adjust the calendar.

(An adjournment was thereupon taken until Monday, November 10, 1947, at 11 o'clock a.m.)

Monday, November 10, 1947,

11:00 o'clock a.m.

The Clerk: Pierson vs. De La Rama Steamship Company.

Mr. Partridge: Your Honor, I might say our efforts to settle were unsuccessful.

The Court: Has the plaintiff finished his case now, or is there some more evidence to be presented?

Mr. Partridge: I will ask permission to recall Mr. Pierson to the stand for some additional evidence; likewise, permission of this court to file, for such assistance as it may serve, a trial memorandum dealing with the problems of proof that we are into, and which has been rather hastily gotten up. Before I call Mr. Pierson I would like

to make these statements to your Honor: First, Mr. Suewer has seen fit to refuse to pay anything in settlement of this case, at all. Second, it will appear from the memorandum there was authority in the State of California in two cases, at least, cited there, including a very late one, that the plaintiff, himself, is perfectly competent to testify as to the value of his services.

The Court: I do not think there is any doubt about that.

Mr. Partridge: It was my understanding, your Honor, that your Honor sustained an objection to a question addressed to him in that regard the other day.

The Court: I do not recall that. I recall that you asked the other witnesses who were here how much the value of the [99] plaintiff's services was, but I do not recall your asking that question of the plaintiff, himself.

Mr. Partridge: Be that as it may, I would like permission to recall him for that purpose.

HERMAN H. PIERSON,

the plaintiff herein, was recalled as a witness, and having been previously duly sworn, testified as follows:

Direct Examination

Mr. Partridge: Q. Mr. Pierson, having in mind your experience in the steamship business, as you recited under oath in this court, do you have an opinion as to the reasonable value of the services performed by you for your steamship company during the war period?

(Testimony of Herman H. Pierson.)

A. You mean you want me to tell what my ideas—

Q. I want to know whether or not you have an opinion on the subject. Do you, "Yes" or "No"?

A. Yes, I have.

Q. Will you state to the court what, in your opinion, the reasonable value of your services performed was or is?

A. I think a minimum of a thousand dollars a month.

Mr. Partridge: You may cross-examine.

Cross-Examination

Mr. Aldwell: Q. Do you consider that \$1000 a month for each and every month of the war period to August 14, 1945? [100]

A. Yes, sir.

Mr. Aldwell: No further questions.

Mr. Partridge: I think we have agreed to stipulate, as far as the plaintiff is concerned, and in behalf of the defendant the following figures are available with respect to salaries actually paid and a salary calculated at the rate of \$1000 a month, the amounts of money received by Mr. Pierson for the period December 7, 1941 to August 14, 1945, total \$34,574.81. That, I should add, includes regular bonuses, the \$2500 bonus and his salary; and at the rate of \$1000 per month, which is the amount sought in the complaint, the total which would have been paid to Mr. Pierson for that same period is \$45,350. You will stipulate that we have reached that figure together, Mr. Aldwell?

Mr. Aldwell: So stipulated.

Mr. Partridge: I at this time, and in light of

the cases contained in the memorandum before your Honor, move that your Honor's order vacating that portion of the testimony of Mr. Parkinson relating to a salary bracket for this job be set aside and that the testimony in that regard be considered as part of the record in this case. I think that after your Honor has examined the authorities cited, your Honor will find that anyone familiar with the steamship business or allied business is qualified to give an estimate as to his opinion of the value of the services. [101]

The Court: I will take the motion under advisement and decide it when I decide the case.

Mr. Partridge: And now we rest.

Mr. Aldwell: I was, if your Honor please, going to make a motion to dismiss, but I think probably I would have to repeat some of the arguments I was going to use, so I think I shall put on the defendant's case and then argue the whole thing at the end of that. I think it will expedite matters. Before doing so, there are one or two motions I want to make.

First, in regard to Mr. Parkinson's testimony, as Mr. Partridge has just stated, some of that was stricken out on my motion in view of his declining to answer certain questions on cross-examination. I just wanted to get it clear in my own mind as to what was stricken out. Your Honor will recall that he testified on direct examination, 1, a minimum salary should be \$12,000 year, and later he also fixed a bracket of \$10,000 to \$15,000. Assuming the motion to strike is granted, I take it that

means both phases of his testimony are stricken out.

Mr. Partridge: I am sure, your Honor, that the record will reveal only the last portion of the testimony was stricken out, that the opinion of Mr. Parkinson as to the reasonable value of the services of Mr. Pierson remains in the record.

Mr. Aldwell: That was admitted subject to a motion to strike, as I recall, at the time. [102]

Mr. Partridge: Yes.

The Court: I will consider the whole matter of the motion to strike this testimony in its entirety on my determination of the case. I will either redecide that question or the decision itself will indicate whether or not I will give credence to that testimony.

Mr. Aldwell: The plaintiff introduced in evidence Mr. Suerer's deposition, and at this time I wish to move to exclude from that a certain part of the cross-examination which appears on page 23, starting at line 11, and continuing through page 23, 24, and concluding on line 7 of page 25, in which there was gone into the question of Mr. Suerer's own compensation. I object to that, if your Honor please, on the ground that that is totally immaterial and irrelevant in connection with the plaintiff's case.

Mr. Partridge: Of course, I am going to make this suggestion, Counsel: I believe his Honor has already made it, that you and I address to this court in writing our respective motions.

Mr. Aldwell: That is the only one I have; as a matter of fact, I did not do it.

I have others, and I think that will save the time of this court.

The Court: I will rule on it right now. There is no use making this case too cumbersome. Page 23 to page 25? [103]

Mr. Aldwell: Stop on page 25 at line 7. That deals with Mr. Bradford's compensation and Mr. Suewer's compensation. In my view it is absolutely immaterial.

The Court: I think I should allow that testimony to stand, counsel, on the theory that it throws some light on the manner in which the defendant was handling the compensation of its employees during the war years.

Mr. Aldwell: Very well, your Honor. That being so, I will proceed with the defendant's case. I believe Mr. Suewer's deposition is already in evidence, but for the sake of the record I will offer it in evidence at this time again on behalf of the defendant.

The Court: Very well.

Mr. Aldwell: I take it your Honor does not want it read in evidence?

The Court: As I stated to you, I read it through during the recess one day. I think it was Friday I read through it. The main issue involved in his deposition was the nature of the compensation of the plaintiff.

Mr. Aldwell: That is correct. At this time also, your Honor, I would like to introduce in evidence portions of the deposition of Mr. Pierson, which was taken by us, and specifically I would like to read them into the record if your Honor will allow

me to do so, because I want to put in a few brief excerpts from it, starting on page 10, line 22:[104]

“Q. Will you state the substance of those discussions you had with Mr. Suewer in February of 1944?

A. He admitted our scale was under steamship companies, and something would have to be done about it, otherwise we were going to make some moves to get some better positions, and he realized at the time it was very difficult to get approvals from the various Government bodies, and he decided that something would have to be done later in the form of taking care of them in some way after the war was over, or when the shooting stopped, anyway, so they could contact the home office. In the discussion I told him that some of our boys were going to move out unless they would get something in the form of increased salaries, in taking care of, especially, the higherups in the operating end of it, including myself. He figured at the time that adjustment could be made to take care of everybody that would come in that category. So we carried on.

Q. Did he at that time make any statement as to his authority to grant salary increases?

A. He had the authority to grant certain increases in salary and pay us the way he did, authorizing us to get increases. He had that authority, but he said he didn't have any authority to grant any bonuses at that time.

Q. What was finally agreed between you as to bonus? [105]

A. He had to take it up with the home office when Manila was liberated and the home office was in operation.

Q. What discussion was had at that time as to the amount of the bonus?

A. There was no actual amount mentioned on it other than what would be considered a fair bonus for the top men that had carried on through the war period at a low salary. There was no actual amount stipulated to.

Q. So he therefore agreed at that time to take the matter up with the people in Manila after Manila was liberated?

A. That's right. Well, he felt, or he asserted that he knew that if he recommended certain increases or bonuses for the boys at work during the war period, he felt positive they would be granted.

Q. But there was no fixing of any amount?

A. No stipulation as to the amount at all, and we trusted the boy."

That concludes that excerpt. One other short excerpt, page 13, line 9:

"Q. Did you have any further discussions on the subject of salary or bonus after that date?

A. The discussion we had was in 1946, February, when he was on his way to Manila, and he promised at that time he would take up the question on the lines that he had [106] promised to, and on his arrival back from Manila in March of 1946, at the Biltmore Hotel, I discussed it with him.

Q. That was the Biltmore Hotel in Los Angeles?

A. Yes, and he said he had discussed it out there with the officials, and that they had approved the plan of paying a bonus to the men that were entitled to a bonus and that he was to work out the ones that were to receive the bonuses and the amounts and submit them to Manila for approval.

Q. Did you at that time or any other time thereafter discuss with him the amount of the bonus he should recommend for you?

A. I never discussed the amount because the way he always expressed it was that it would be a justifiable amount for the services performed."

Those are the only two excerpts from Mr. Pierson's deposition that I wish to offer in evidence at this time.

I wish to offer in evidence at this time a series of cables between New York and Manila, and a certified copy of the resolution of the board of directors, and Mr. Partridge, I believe, has no objection to the introduction.

Mr. Partridge: I have no objection to a better foundation being laid. I waive any formality about their proof. What is the purpose of the offer? [107]

Mr. Aldwell: The main purpose is to give the court the full story here.

Mr. Partridge: I have no objection.

Mr. Aldwell: I offer in evidence a photostatic copy of a cable addressed to Sueser, New York, from Garrett, and ask that that be introduced as Defendants' Exhibit A.

(The document referred to was thereupon received in evidence and marked Defendants' Exhibit A.)

Mr. Aldwell: I also offer in evidence photostatic copy of a radiogram addressed to Garrett, RAMA, Manila, signed Suewer, dated July 8, 1946.

(The document referred to was thereupon received in evidence and marked Defendants' Exhibit B.)

Also a photostatic copy of a cable addressed to Suewer, RAMA, New York, signed Gefrett—I presume that means Garrett, dated July 11, 1946.

(The document referred to was thereupon received in evidence and marked Defendant's Exhibit C.)

Also a certified copy of a resolution of the board of directors of the De La Rama Steamship Company on July 10, 1946, certified by the Assistant Secretary of the Company.

(The document referred to was thereupon received in evidence and marked Defendants' Exhibit D.)

Mr. Aldwell: If your Honor please, certain parts of these cables refer to something else. I think it would help if I [108] just read them into the record.

Exhibit A, dated July 8, 1946, addressed to Suewer, 90 Broad Street, New York, and signed by Garrett.

“Thirty-nine your twenty-two * * * Please advise names five executives for whom bonus proposed and I will discuss with directors meeting next Wednesday. (Signed) Garrett.”

Exhibit B, radiogram dated July 8, 1946, addressed to Garrett, RAMA, Manila:

“Thirty-two your thirty-nine * * * (Replying to the one I just read) * * * McManus, Pierson, Middleton, Lowey stop Klee Meridith equal shares of fifth grant. (Signed) Suewer.”

Mr. Partridge: Apparently that means they split the \$2500 among those three people.

Mr. Aldwell: Yes, they list four and then two others to split fifth grant.

Exhibit C, a cablegram dated July 11, 1946, addressed to Suewer, New York, signed Gefrett:

“Forty board approve total bonus payment twelve thousand five hundred dollars but disapprove additional commission to Bradford.”

The Court: Those telegrams passed after Suewer had returned from his visit?

Mr. Aldwell: That is correct, your Honor, yes. This [109] is in July, 1946, and your Honor will recall the bonus check \$2500 referred on the voucher there to board of directors' resolution of July 11th. That is the resolution I am now going to read. Reading now from Exhibit D, after reciting who was present at the meeting and so forth:

“The next matter brought before the meeting was the suggestion of Mr. Robert Suewer, manager of the company's interests in the United States, to the effect that the sum of \$12,500 be appropriated for a bonus to six (6) deserving minor executives of the New York, San Francisco and Los Angeles offices in consideration of meritorious services rendered by them during the war.

“On motion duly made and seconded, the

following resolution was, thereupon, unanimously approved:

“Resolved, that a special bonus amounting to a total of \$12,500 be paid to such minor executives of the New York, San Francisco, and Los Angeles offices, as may be determined by Mr. Robert Suewer, in consideration of meritorious services rendered by them during the period of the war.”

HUGH MIDDLETON

was called as a witness on behalf of the defendants, and being first duly sworn testified as follows:

The Clerk: Q. Will you state your name to the court? [110] A. Hugh Middleton.

Direct Examination

Mr. Aldwell: Q. Where do you live, Mr. Middleton?

A. In San Rafael, at the present time.

Q. Are you employed by the defendant, the De La Rama Steamship Company, Inc.?

A. Yes.

Q. How long have you been employed by the defendant? A. Since the spring of 1939.

Q. You were employed by the defendant during the period December 7, 1941 to August 14, 1945?

A. Yes.

Q. In what capacity?

A. District Manager in Los Angeles, and toward the latter part of that period I was assistant Pacific Coast manager with headquarters in Los Angeles.

(Testimony of Hugh Middleton.)

Q. What is your present position?

A. Pacific Coast manager.

Q. In San Francisco?

A. In San Francisco.

Q. You just heard me read certain telegrams referring to certain gentlemen. Would you be good enough to identify these gentlemen and their positions with the De La Rama during the war, excluding Mr. McManus, Mr. Pierson and yourself, with whom the court is already familiar? Who is Mr. Lowey? [111]

A. Mr. Lowey was in our New York office and to the best of my knowledge he was in charge of all auditing and accounting procedures for the company in the United States.

Q. That was during the war period?

A. Yes.

Q. Do you know whether Mr. Lowey got a bonus?

A. I understand he did get a bonus.

Q. Do you know how much?

A. I understand it was \$2500.

Q. How about Mr. Klee? Who was he?

A. Mr. Klee was traffic manager in our New York office. However, during the war period there was not much in the way of traffic that existed; therefore, he put in his time in various other capacities.

Q. Do you know what bonus he received?

A. I understand he received \$1250.

Q. Who was Mr. Meredith?

(Testimony of Hugh Middleton.)

A. Mr. Meredith was the operating manager for the company with headquarters in New York.

Q. Do you know what bonus he received?

A. I understand he also received \$1250.

Mr. Aldwell: No further questions.

Cross-Examination

Mr. Partridge: Q. Do you know what salaries these men received, or any of them? [112]

A. No, I do not.

Q. You know that Mr. Suewer got a total bonus, Mr. Middleton, of in excess of \$102,000 for this period, do you not?

Mr. Aldwell: Just a minute. I think you are assuming something not in evidence. Mr. Suewer's testimony indicates it was not a bonus; it was an adjustment of compensation.

Mr. Partridge: All right, I will adopt your description of it.

The Court: His deposition recites that.

Mr. Partridge: Yes.

Mr. Aldwell: Adjusted compensation.

The Court: He said he got a raise to \$40,000 a year during the war period.

Mr. Partridge: Q. Did you know that was a fact, Mr. Middleton?

A. All I know regarding that is what I heard here in this court.

Q. And that is true about those other bonuses; you know nothing of your own personal knowledge respecting them, is that correct, the ones you testified to?

(Testimony of Hugh Middleton.)

A. Those that I have testified to, and also in my own case, I naturally know something about them through conversations with Mr. Suewer.

Q. You know your own because you got that; the rest of them you heard these men got, is that correct?

A. I was told that is what they received by Mr. Suewer. [113]

Mr. Partridge: That is all.

The Court: Q. What salary were you getting during the war years? I do not think that was mentioned. You said it was less than \$600 in one of the depositions.

Mr. Aldwell: I think it is in Mr. Suewer's deposition.

The Court: I would like to get that straight.

Q. What was your salary during the war period?

A. During, well, I believe it was along about August, 1943, my salary was \$400 per month.

Q. And then you received a raise?

A. I received increases at the same time that other members of the staff received increases, and I believe one was in the spring of 1945, when my salary was increased to approximately \$515 per month, and then there was a subsequent increase in the late summer of 1945, which brought my salary up to approximately \$540. I do not recall the exact figure.

The Court: It is already in the record what Mr. McManus' salary was.

(Testimony of Hugh Middleton.)

Mr. Aldwell: Yes. That is the one Mr. Suewer stated was getting less than \$600.

The Court: Q. Do you know what Mr. McManus' salary was?

A. Not exactly, but it was presumably less than mine.

Mr. Partridge: If counsel cares to, I have these figures with respect to Mr. McManus' salary, which I shall read to his Honor if you would agree, counsel, subject to any correction. [114]

On December 1, 1941 his salary was \$250 a month. October 15, 1942, it was \$350. October 1, 1943, it was \$412.50. May 1, 1945 it was \$463.53. That continued until the conclusion of the war.

Mr. Aldwell: That is all I have, your Honor.

Mr. Partridge: One more question.

Q. Mr. Pierson hired you originally, did he not, Mr. Middleton?

A. I was hired by Mr. Pierson, also with Mr. Bradford being present.

Mr. Partridge: That is all.

The Court: That is all.

Mr. Aldwell: That completes our case, your Honor.

Mr. Partridge: I would like to offer the entire deposition of Mr. Pierson in evidence, may it please the court, and invite your Honor's examination of it at his leisure, and if counsel will deem it has been read in evidence—

The Court: It does not change the testimony that Mr. Pierson gave, in any way, does it?

Mr. Partridge: No.

Mr. Aldwell: No. I think the other parts of his deposition, other than what I read, are largely matters that were covered in his direct examination here. That is the reason I did not put the whole thing in.

The Court: The part you referred to only had to do with the conversation. [115]

Mr. Aldwell: That is correct, yes, your Honor.

Mr. Partridge: I believe part of it is in evidence, and it is only proper to have the entire deposition in evidence, and it is for that reason that I offer it.

The Court: Even the procedure of your opponent was not quite correct. Apparently everybody is satisfied to do it that way, but there is no procedure for introducing a deposition of a party when he is here at the trial, unless it is used in his cross-examination in some way. I do not think it particularly adds anything to what I have here in the form of the deposition of Mr. Suewer and the testimony of Mr. Pierson as to the vital matters connected with their conversations. It would not add anything to introduce the deposition.

Mr. Aldwell: I have no objection to the whole deposition going in.

The Court: If you wish to do that, it may be considered in evidence, then.

Mr. Partridge: Thank you, your Honor. We have no further testimony, your Honor.

The Court: The question is, was there a contract and what was it? Isn't that the legal question involved here?

Mr. Partridge: Yes. Shall I briefly address your Honor on the subject, or not?

The Court: Yes, we might as well use the time now and do that. [116]

(Argument.)

The Court: Suppose you do this: It is getting past the noon hour. You have submitted this line of authorities. Suppose you file now your authorities, Mr. Aldwell, and if there is anything you want to reply to Mr. Aldwell's memorandum, you may do so. How much time would you want?

Mr. Aldwell: Ten days.

The Court: How much time would you want to reply to his memorandum?

Mr. Partridge: I think another five.

The Court: Suppose we mark the matter submitted on the basis of ten days for you to file your memorandum and five days to reply.

Mr. Partridge: If it does not perhaps inconvenience your Honor, I should like to ask for ten days also.

The Court: Very well, then, ten and ten, then.

[Endorsed]: Filed Sept. 16, 1948.

[Title of District Court and Cause.]

DEPOSITION OF ROBERT F. SUEWER

Be it remembered: That on Wednesday, July 30, 1947, pursuant to written stipulation of counsel hereunto annexed, at the offices of Messrs. Brobeck, Phleger & Harrison, Suite 1100, 111 Sutter Building, in the City and County of San Francisco, State of California, personally appeared before me, Eugene P. Jones, Esq., a notary public in and for the City and County of San Francisco,

(Deposition of Robert F. Suewer.)

State of California, authorized to administer oaths, etcetera, Robert F. Suewer, a witness called on behalf of the defendants.

Robert G. Partridge, Esq., represented by Leo M. Cook, Jr., Esq., appeared as counsel for plaintiff; and Messrs. Brobeck, Phleger & Harrison, represented by Alan B. Aldwell, Esq., appeared as counsel for defendants; and the said witness, having been by me first duly cautioned and sworn to tell the truth, [1] the whole truth, nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the counsel for the respective parties that the deposition of the above named witness may be taken on behalf of the defendants at the offices of Messrs. Brobeck, Phleger & Harrison, Suite 1100, 111 Sutter Building, in the City and County of San Francisco, State of California, on Wednesday, July 30, 1947, before Eugene P. Jones, a notary public in and for the City and County of San Francisco, State of California, and in shorthand by Kenneth G. Gagan.

(It is further stipulated and agreed by and between the counsel for the respective parties that the deposition, when transcribed into longhand typewriting, may be read into evidence by either party on the trial of said cause; that all objections as to the notice and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the

(Deposition of Robert F. Suewer.)

time of taking said deposition, and that all objections as to materiality, relevancy, and competency of the testimony are reserved to all parties for the time of trial.

(It is further stipulated by and between counsel for the respective parties that the deposition, when completed, may be sent to the witness by the notary for reading over, correcting and signing thereof, but that said signing need not be attested [2] by the notary.)

Mr. Aldwell: It is stipulated that the signature of the witness to the deposition is waived but that the witness may make corrections and report the corrections; so stipulated?

Mr. Cook: So stipulated.

Mr. Aldwell: I presume we should have the usual stipulation on this, that all objections as to the form of the questions are to be made at this time and all other objections reserved for trial.

Mr. Cook: That is correct.

ROBERT F. SUEWER,

called as a witness by defendants; sworn.

Direct Examination

Mr. Aldwell: Q. Mr. Suewer, will you state your full name for us?

A. Robert F. Suewer.

Q. What is your address?

A. Manhasset Bay Yacht Club, Long Island; business address is 90 Broad Street, New York.

Q. Are you an officer of the De La Rama Steamship Co., Inc.?

A. Yes.

(Deposition of Robert F. Suewer.)

Q. What is your position? [3]

A. I am vice president.

Q. For how long have you been vice president of the corporation?

A. Since February 23, 1946.

Q. What was your capacity with the corporation prior to that?

A. I was the United States Manager.

Q. How long did you act in that capacity?

A. Since July 1, 1940.

Q. By what, if anything, was your appointment evidenced? Do you have anything in writing, I mean, as United States Manager?

A. Yes; I have a letter from the President and I am quite certain the powers of attorney they gave me at that time designated me as United States Manager.

Q. Who is the president of the corporation at the present time?

A. Don Esteban De La Rama.

Q. How long has he been president, if you know?

A. Shortly after the war ended he took over the presidency.

Q. Who was the president before him?

A. Enrico Pirovano.

Q. How long had he been president of the corporation, if you know? He died, did he not?

A. Yes. I know he was president in January of 1939, and I presume he was—

Q. Well, that is far enough. Under what laws is the De La Rama Steamship Co., Inc., incorporated? [4]

A. Philippine Islands.

(Deposition of Robert F. Suewer.)

Q. The De La Rama Steamship Co., Inc., is the same corporation at all the times material that are alleged in Mr. Pierson's complaint? A. Yes.

Q. It has always been the same corporation?

A. Yes.

Q. There has been no change in this corporation? A. No.

Q. Do you know when it was incorporated? If you don't know it doesn't make any difference.

A. It goes back to 1800 something.

Q. In February 1944, how many employees did the corporation have in the United States, approximately? A. You mean in our three offices?

Q. In your three offices in the United States.

A. 65 to 75, to the best of my knowledge.

Q. Have there been any material changes in the number of employees from that time until now?

A. I think it has probably decreased by about ten people or so.

Q. Are you the only officer of the corporation at the present time in the United States?

A. Yes.

Q. Have you, as a matter of fact, been the only officer of the corporation in the United States? [5]

A. Yes, except when the president was visiting here.

Q. I mean permanently in the United States.

A. Yes.

Q. That is true, is it, at the time when you were just the United States Manager?

A. That is correct.

(Deposition of Robert F. Suewer.)

Q. Will you relate the circumstances whereby communications were severed between the Philippines and the United States after the Japanese invaded the Philippines? What happened after that in so far as the conduct of the business or the work in the United States was concerned?

A. Well, on December 7th war broke out, December 7, 1941. We remained in communication with Manila in a sort of haphazard fashion until about the end of December of that year. I believe it was on December 13, 1941, that I received a cable from Manila in which they quoted a cable they had sent to the Philippine National Bank, New York, authorizing the bank to release to me certain powers of attorney which they termed wartime powers of attorney. I believe you want to know about changing my status?

Q. Yes.

A. It came about on that date in December, 1941.

Q. Can you tell us briefly what that change in status was?

A. It was a very short power of attorney which authorized me to handle the vessels of the company, a little more complete [6] than my ordinary power of attorney.

Q. Your ordinary power of attorney refers to what?

A. The usual power of attorney given to a manager so that he can efficiently operate an office distant from the home office. I was empowered to open bank accounts; I was told how to deposit the moneys; I was authorized to make the necessary

(Deposition of Robert F. Suewer.)

arrangements with the customs authorities, similar to that.

Q. What about employing the personnel?

A. Oh, I had authority to employ personnel in the lower ranks but, as a matter of fact, I had instructions from the president to consult with him if I were going to take on additional help.

Q. What authority did you have in so far as the fixing of salaries and so forth was concerned?

Mr. Cook: At what time is this?

Mr. Aldwell: Well, let's go back first to before your wartime power took effect. What authority did you have then as to fixing salaries, and so forth?

A. I did not have any authority to fix salaries.

Q. What was your procedure in arriving at salaries at that time?

A. Well, during that period if I had occasion to increase some salaries I would write to our president, in Manila, asking for his authority. If I remember correctly, he granted me that authority specifically. In other words, I did not have complete power to increase.

Q. Directing your attention to the period after, shall we call [7] it your wartime power came into effect, what was the situation then?

A. Well, it hadn't changed specifically, although I think it would be reasonable to assume that being out of contact with Manila, they would have expected me to take upon myself some such authority.

Q. You know Mr. H. H. Pierson, the plaintiff in this case? A. Yes.

(Deposition of Robert F. Suewer.)

Q. How long have you known him?

A. Since early 1939.

Q. Do you know when Mr. Pierson was employed by the defendant, De La Rama Steamship Company?

A. Well, it would have been effective as of July 1, 1940, when De La Rama Steamship Company purchased De La Rama Steamship Agencies, Inc.

Q. Mr. Pierson continued on in that employment? A. That is correct.

Q. Do you know who fixed Mr. Pierson's salary at the time? A. The president, Mr. Pirovano.

Q. Do you know what that salary was?

A. I think it was \$600 a month.

Q. When did Mr. Pierson leave the employ of your company?

A. Oh, about, I should think perhaps six or eight months ago; I don't know the exact date.

Mr. Aldwell: I guess we can stipulate it was August 31, [8] 1946?

Mr. Cook: Oh, certainly.

Mr. Aldwell: Q. Did Mr. Pierson leave your employ voluntarily? A. Yes.

Q. So that from July 1, 1940, until August 31, 1946, Mr. Pierson was continuously in the employ of the De La Rama Steamship Company?

A. Yes.

Q. In what capacity was he employed?

A. Pacific Coast Manager.

Q. That was his position during all of that period? A. Yes, that is correct.

(Deposition of Robert F. Suewer.)

Q. Did you also have in your employ a gentleman by the name of G. P. Bradford?

A. Yes.

Q. What was his connection with your company?

A. He was our assistant United States Manager.

Q. For what period.

A. Only for a few months; from about November or December of 1941 until, I believe, February 15, 1942.

Q. What was the relationship between Mr. Bradford and Mr. Pierson?

A. I hope I am answering it correctly; Mr. Bradford was Mr. Pierson's superior. [9]

Q. Will you state briefly what Mr. Pierson's duties were as Pacific Coast Manager?

A. That is always a tough question. He was to manage two offices, one in San Francisco and another in Los Angeles, and to conduct those offices as steamship offices generally are conducted.

Q. What was his general authority in that capacity?

A. He had control of a large number of people, and he was supposed to see to it that our ships were handled properly in these ports; he signed checks; did the customary things that a manager would do.

Q. Were Mr. Pierson's services satisfactory?

A. No.

Q. Would you elaborate on that a little?

A. Well, they were not satisfactory in this respect: He did not seem to be able to maintain

(Deposition of Robert F. Suewer.)

proper discipline in the offices. We were continually having to write to him, and occasionally I had to come out here; not occasionally—as a matter of fact, I had to come out several times a year, because the ordinary affairs of a steamship office were not progressing satisfactorily. We could not get suitable reports on our ships and cargoes, and we found him to be rather inefficient as, shall we call it, an executive in charge of a group of people?

Mr. Cook: For the purpose of the record, I will move to strike the witness's answer as being statements of personal conclusions rather than statements of fact. [10]

Mr. Aldwell: Q. Mr. Suewer, would you please state the circumstances in so far as the operation of the company was concerned, following the outbreak of the war on December 7, 1941?

A. Early in 1942 our three ocean-going ships were requisitioned by the Maritime Commission. As a Philippine corporation, therefore a foreign corporation, we were not at that time authorized to become general agents of the Maritime Commission. We found ourselves with very little to do in the early part of 1942. Meantime we were constantly pressing the Maritime Commission, which later became War Shipping Administration, to grant us a general agency contract, so that we could remain in business, because I knew that unless we could get some of these Maritime Commission ships we could not maintain our offices. We did become a general agent in the latter part of 1942. I think it was not until early 1943 that we were given any

(Deposition of Robert F. Suewer.)

ships to operate. In 1942 we just went along, maintained the offices as well as we could; we did not discharge anybody, but if anybody left we did not try to hold them. In 1943 we managed to get these ships from the War Shipping Administration, and in addition to that we took over some vessels on an agency basis, so that I believe it is fair to say that from early 1943 until the close of the war we were operating almost entirely for the War Shipping Administration in one form or another.

Q. Did you have any discussion with Mr. Pierson with regard to [11] salary, say, commencing with the period following the outbreak of the war?

A. Well, in 1942, there would have been no discussions, because Mr. Pierson knew that we were in rather a precarious position until we got these Government boats; subsequent to that we had discussions and Mr. Pierson was granted, I believe, two increases in salary.

Q. Do you recall when they were?

A. I am afraid not. I am guessing but I think that his last increase brought him up to \$750 a month, or something like that.

Q. These two increases that he received, that you mentioned, in connection with them did you or did the company make application for approval for those increases to the Salary Stabilization Unit of the Treasury Department?

A. Yes; Mr. Pierson did.

Q. And those approvals were obtained?

A. Oh, yes.

(Deposition of Robert F. Suewer.)

Q. Did you have any discussion with Mr. Pierson concerning salary adjustments in the month of February, 1944?

A. It is a little difficult to remember the exact month; it is quite possible that I did in that particular month.

Q. Well, assuming that it was in that particular month, do you recall what discussion was had?

A. With regard to the salary, you say?

Q. Yes. [12]

A. No, I don't recall any discussion with regard to salary. I believe we were referring to a discussion with regard to bonus. I voluntarily told Mr. Pierson on one of my trips out here, which must have been in the spring of that year, that when the war was over and when we could communicate again with Manila, that I was going to ask our board of directors to give to certain key men, including Mr. Pierson, a bonus in addition to the usual bonus which we gave each year, and that was one month's salary, in December of each year.

Q. That was the only discussion, was it, that you had with Mr. Pierson with regard to a bonus at that particular time, that is, in the spring of 1944?

A. That is about all that I can think of.

Q. Did you at any time discuss with him at all the matter of bonus for the people in the corporation, or the matter of increase in salary for other people who were employed?

A. Well, as I say, I told Mr. Pierson at the

(Deposition of Robert F. Suewer.)

time that I was going to ask for a bonus for the key men, and that included Mr. Pierson.

Q. Was there any discussion had at that time with regard to the low salaries being paid by the company?

A. I believe Mr. Pierson said that it was his opinion that our salaries generally were below those being paid by other steamship companies.

Q. Did you make any comment with regard to that? [13]

A. Well, that question came up not only at that time—I am sure that he brought it up at other times, and we endeavored to give increases to the general office staff. He would apply to the Wage Stabilization Board and if approvals were granted it was for increases in salaries. In other words, we tried as well as we could to keep in line with the others.

Q. At the time you had this conversation with Mr. Pierson in the spring of 1944, did he threaten to resign unless some commitment was made as to either an increase in salary or a bonus?

A. No, of course not, and you must remember that I voluntarily brought up this matter of granting a bonus. It hadn't come from Mr. Pierson, at all, so there could not have been such an ultimatum.

Mr. Cook: We move to strike that answer as not responsive and as a conclusion of the witness.

Mr. Aldwell: Q. Subsequent to the spring of 1944 did you have any other discussion with Mr. Pierson with regard to the payment of a bonus?

(Deposition of Robert F. Suewer.)

A. No discussion. I suppose it was mentioned occasionally on my visits out here that I was going to speak to the board of directors about it, but no general discussion.

Q. Referring again to this discussion in the spring of 1944, do you recall whether any other persons were present during any such discussions?

A. I am quite certain there were no others present.

Q. Did you make any record of any such discussions? A. No.

Q. In February, 1944, were you Mr. Pierson's immediate superior? A. Yes.

Q. As such did you exercise supervision over his activities? A. Yes.

Q. Could you tell us in a few words just what that supervision consisted of?

A. Well, it had greatly to do with the manner of operation of the offices and with the personnel in those offices. I was the one who determined whether there should be salary increases, whether he should take on additional help; general things of that nature.

Q. Would you give us a brief outline of your experience in the steamship business?

A. I have been with the De La Rama Steamship Co., Inc. since July 1, 1940. Prior to that I was the United States Manager for MacLeod & Co., Inc., who were the general United States Agents for the De La Rama Steamship Co. For some four years prior to that I was employed by Lamport & Holt Line, an English steamship company.

(Deposition of Robert F. Suewer.)

Q. How long were you employed by MacLeod?

A. From January 1, 1939 until June 30, 1940, when the general [15] agency agreement was terminated; then I went to work for De La Rama Steamship Co.

Q. How long were you employed by Lamport & Holt? A. Approximately four years.

Q. What was your capacity with them?

A. When I left I was chief clerk. I suppose that was not the term—actually, I was assistant to the assistant manager.

Q. Have you had any other steamship experience besides that? A. No.

Q. Have you had any other business experience?

A. Yes; prior to that I was traffic manager for an exporting commission house.

Q. Where was that? A. In New York.

Q. As a result of your experience in the steamship business and your knowledge of it, have you been able to form any opinion as to, shall we say, the proper performance, the proper running of a branch office of a steamship company?

Mr. Cook: Before you answer that, I will interpose an objection to the question on the ground it calls for a conclusion and opinion of the witness, and no proper foundation has been laid for expert testimony.

A. I think I have some experience, Mr. Aldwell. When MacLeod & Company took over this general agency agreement they employed me to set up the New York office, which, of course, was a branch [16] office of, it was in effect a branch office of the

(Deposition of Robert F. Suewer.)

Manila office. I employed all the people. I obtained the office space and fitted out the office, and the responsibility was mine to see that that office ran properly. Although the De La Rama agency was not owned by De La Rama Steamship Co., there was an agreement entered between De La Rama Agency and De La Rama Steamship Co. that the New York office would have some authority over the agency offices, which were the two California offices, and in 1939 it was my duty to come out to California and see that these offices were properly set up.

Q. Based upon your experience in the steamship business, are you able to form an opinion as to the relative comparison between various steamship companies in so far as the duties of their managers are concerned?

Mr. Cook: We object to the question on the ground it is vague and indefinite in form, and calls for the opinion and conclusion of the witness.

Mr. Aldwell: Do you feel you can answer that question?

A. I think generally that I could do so.

Q. Do you consider Mr. Pierson's duties as Pacific Coast Manager as comparable to the duties of similar managers of other comparable steamship companies?

A. They were not in our particular company.

Q. Why not?

A. Because Mr. Pierson was not able to perform his duties properly. [17]

(Deposition of Robert F. Suewer.)

Mr. Cook: I will move to strike that answer on the ground it is not responsive.

Mr. Aldwell: All right: I think we can stipulate that the answer is not responsive.

Q. What I was trying to find out was, assuming that the duties were properly performed, were they comparable?

A. Yes, comparable to steamship companies of a like size.

Q. But, as you stated some time ago, in your opinion the services of Mr. Pierson were not satisfactory?

A. That is correct.

Mr. Cook: To which objection was made and renewed at this time.

Mr. Aldwell: Q. In your capacity as United States Manager for the Defendant, and as Mr. Pierson's direct superior in this country, did you consider that his services were such that he would be entitled to extra compensation at the end of the war?

A. Yes, in the form of this bonus which I told him I would refer to the directors?

Q. When the war ended, when did you re-establish communication with Manila?

A. In the second half of 1945; I can't recall the exact date.

Q. As a result of that re-establishment of communication, was there any change in the manner of operation of the corporation in this country from what you have previously described during [18] the war years?

A. No.

(Deposition of Robert F. Suewer.)

Q. Did you make any trips to Manila?

A. Yes; I went out to Manila in February of 1946.

Q. When did you return to this country?

A. Late March, early April of the same year.

Q. What was the purpose of the trip, generally?

A. I reported to the directors and owners the operation of the United States offices during the war.

Q. While you were there did you discuss with the board of directors and the management the matter of bonuses to employees in the United States? A. Yes.

Q. Can you state substantially what the discussion was in that regard?

A. It was not very lengthy. I told them I thought that certain key individuals in the United States should be paid a bonus in addition to the usual month's bonus, and they suggested that upon my return to the United States that I suggest to them who should receive these bonuses and how much they should be.

Q. Did you do that? A. I did that.

Q. Did you specifically recommend the particular individuals who were to receive, or who should receive a bonus? [19] A. Yes.

Q. And the amounts that they should receive?

A. Yes.

Q. Were those recommendations of your approved by the board of directors? A. Yes.

Q. Was any change made by them?

A. No.

(Deposition of Robert F. Suewer.)

Q. In making your recommendation as to the bonus for Mr. Pierson, how did you arrive at the amount which you recommended?

A. I considered that there had been approximately four years involved, and I thought that an additional bonus of \$500 or so a year would be suitable, and I finally arrived at a round figure of \$2500 for the entire period.

Q. Do you have any knowledge as to bonuses that may have been paid by other comparable steamship companies—and when I say “bonus” I mean bonus paid at the end of the war as distinguished from annual bonus.

A. No, I don't.

Q. What other employees on the Pacific Coast received bonuses at that time?

A. Mr. McManus, who was the operating manager, Mr. Middleton, who was the manager in charge of Los Angeles.

Q. What bonus did they receive?

A. Exactly the same as Mr. Pierson. [20]

Q. So that all three men received \$2500; is that correct?

A. That is correct.

Q. Did Mr. Pierson, during the month of February, 1944, state to you that the salary paid by the company to him for the services performed and to be performed was insufficient and inadequate?

A. No.

Q. Did he ever make such a statement to you?

A. Not exactly that statement. At times he asked for an increase in salary, and, as I say, we

(Deposition of Robert F. Suewer.)

granted him several increases, rather I granted him several increases.

Q. Did he ever state to you, either in the month of February, 1944, or any other time, that the salary being paid to him was less than the reasonable value of his services? A. No.

Q. Other than what you have just said?

A. No.

Q. Did he ever state to you during the month of February, 1944, or at any other time, that the salary being paid to him was less than the salary paid to other persons holding comparable positions and performing comparable duties in other similar steamship companies, other than what you have already stated? A. I do not recall.

Q. Did he ever state to you during the month of February, 1944, or at any other time, that by reason of the insufficiency [21] and inadequacy of his income he was unable and unwilling to continue his employment with the company as its Pacific Coast Manager, and would therefore resign from their employ? A. No.

Q. Did you ever, either in the month of February, 1944, or at any other time, state to Mr. Pierson that if he, Mr. Pierson, would not resign his position and would continue in his employment and in the performance of his duties until the termination of actual combatant warfare by the United States the corporation would pay him a bonus which together with the salary received by him from December 7, 1941, to the date of the termination of

(Deposition of Robert F. Suewer.)

said actual combatant warfare, which would equal a salary and bonus paid other persons holding comparable positions and performing comparable duties in other similar steamship companies?

A. No.

Q. Was any application ever made by the corporation to the salary stabilization unit of the Treasury Department, or other administrative agency of the Government, having jurisdiction over wage adjustments, for the approval of the payment of any bonus to Mr. Pierson other than the annual bonus which you have testified to? A. No.

Q. As far as you know, was there any approval for the payment of any such bonus by such unit or agency? [22]

A. No. I am not quite clear. I am trying to recall whether it was necessary to obtain the approval of the Wage Stabilization Board for his \$7500 a year. I think that had expired by that time, but I am not certain.

Mr. Aldwell: I believe that is all.

Cross-Examination

Mr. Cook: Q. Mr. Suewer, have you at any time been a member of the board of directors of the De La Rama Steamship Company? A. No.

Q. What has the basis of your compensation been? Have you been on a salary plus bonus?

A. No; salary plus commission on net profits of the corporation.

Q. Has that been true from December 7, 1941, to the present time?

(Deposition of Robert F. Suewer.)

A. No. To the present time, you say?

Q. Yes.

A. It was true for the past fiscal year which ended on September 30th of last year.

Q. Well, during the period of the war from December 7, 1941, to VJ Day, what was the basis of your earnings from the company; were you on a salary basis then? A. Yes.

Q. Plus a bonus? A. No.

Q. Did you receive the usual month's bonus each year? [23] A. No.

Q. May I ask what that salary was during the war years?

A. I think that in order to clarify this I must tell you exactly what occurred.

Q. Certainly; go right ahead.

A. During the so-called war years I took exactly the same salary that I had been taking previously, which was \$12,000 per year. In February of 1946 when I was in Manila, I discussed with our directors the matter of my salary for those war years, and the fact that I hadn't been able to obtain suitable compensation on a commission basis, everything had been thrown haywire by the war, and the fact that our ships were taken over by the United States Government; in other words, we were not earning freight moneys such as that. As I say, I took \$12,000 per year with no additional compensation, and that was one of the things we discussed in Manila, and we decided, the directors decided then that I should be compensated for those

(Deposition of Robert F. Suewer.)

war years at the rate of \$40,000 per year, that is, an additional \$28,000 per year for the war years.

Q. That amount has been paid you?

A. Yes.

Q. This Mr. Bradford, whom you mentioned, who is No. 2 man in the corporation, do you know what he was being paid in those few months he worked in 1942 before he left to go into some branch of the American war service? [24]

A. I will have to guess at it. I think it was \$900 a month.

Q. He later rejoined the organization?

A. Yes.

Q. Is he still with the organization?

A. No; he left us.

Q. When he came back do you know what salary he came back at?

A. I am reasonably certain it was \$1000 a month.

Q. As I understood your practice, Mr. Suewer, with the Pacific Coast Manager and other key employees, it was to pay them a certain monthly salary plus one month's salary as a bonus per year?

A. Correct.

Q. Did that extend throughout your organization to everyone? A. Yes.

Q. Did Mr. Bradford receive any war bonus?

A. No.

Q. Now, under Mr. Pierson came Mr. McManus, was it, as traffic manager?

A. No; he was operating manager.

(Deposition of Robert F. Suewer.)

Q. Operating manager. And generally speaking, Mr. McManus—was he next in line down or was he not?

A. No; Mr. Middleton was next in line.

Q. You said Mr. Middleton. Mr. Middleton was in charge of the Los Angeles office through the war?

A. Yes; Los Angeles and Long Beach offices.

Q. How many men did he have under him roughly, how many employees?

A. I would say he had between 15 and 20.

Q. Is it fair to state that Mr. Middleton was getting a salary in the nature of \$400 to \$450 a month when the war started?

A. Based on what he says, I would say yes.

Q. Was he granted any increase during the war period?

A. Yes, along with everybody else.

Q. What was the highest salary that he was paid during the war years?

A. I believe \$500 a month.

Q. Taking Mr. McManus, who was the operating manager, do you have any recollection as to his salary during the same period; were they lower than Mr. Middleton?

A. Yes, it would be somewhat lower than Mr. Middleton's.

Q. \$50 or \$100 a month lower? A. Yes.

Q. What was Mr. McManus' status in the organization as it bears relation to Mr. Pierson?

A. Well, I may not be answering this correctly,

(Deposition of Robert F. Suewer.)

but Mr. Pierson was the Pacific Coast Manager; then would come Mr. Middleton, and then would come Mr. McManus.

Q. They were subordinate in their positions to Mr. Pierson? A. Yes.

Q. Just as Mr. Pierson was subordinate to you?

A. Correct.

Q. Do you know where this power of attorney which was cabled to the Philippine Bank in New York, covering your handling of the company during the war, now is?

A. Yes; I have a copy of it in New York.

Q. One can be secured?

Mr. Aldwell: We will produce that if you wish.

Mr. Cook: Q. You did not actually hire Mr. Pierson, that was done by the president of the company, I take it, when the De La Rama Agencies were taken over by the De La Rama Company?

A. Well, I suppose that is correct; all the organization went along, you see.

Q. But you testified, I believe, that his salary was set by the board of directors rather than by you? A. That is correct.

Q. During the war years have you any recollection as to when Mr. Pierson first mentioned the matter of an increase in his salary to you?

A. No, but I would assume it was sometime in 1943.

Q. 1943. In asking for an increase, did he ask for one for himself, or for one for himself and the other key men, as we call it, in the organization?

(Deposition of Robert F. Suewer.)

A. I believe he asked for general increases, I think that was it. The matter of high cost of living came up, the necessity for increasing salaries generally was brought up. [27]

Q. That resulted in your authorizing him to apply for an increase to the Salary Stabilization Unit of the Treasury Department, I believe it was?

A. Yes.

Q. And he was to make that application on behalf of the company? A. Yes.

Q. Do you recall Mr. Pierson asking you to apply for such increases through the New York office rather than to require him to do it here in San Francisco? A. No, I don't recall.

Q. Do you recall such a request being made as to any later increase after the first increase that was granted him? A. No, I do not.

Q. Is it that you do not remember, or—

A. Yes; I don't remember.

Q. He could have? A. He could have.

Q. Coming up to February, 1944, how many vessels was your company operating generally, if you recall? A. 20.

Q. 20 vessels, either as general agents or under agency contracts?

A. Oh, no. If you consider the agency contracts, there were more, and it would be difficult to say how many vessels, because we would only get one as it came into port, so I could hardly [28] cover that.

Q. Well, it is fair to state, isn't it, that you

(Deposition of Robert F. Suewer.)

were operating a substantially larger number of vessels than you had operated as a private operator before the war, when you say you had three?

A. Yes; we had three of our own, but we had agency vessels, too, as well.

Q. Had your business doubled or tripled in size?

A. Well, the number of vessels which we handled was greater, but we handled it in a different manner, so it is difficult to say whether business had doubled or tripled, because we were—in most of the ships we had nothing to do with cargo; with the agency, or with the sub-agency vessels we handled some cargo.

Q. Looking at it from a standpoint of earnings, and speaking of gross earnings, I am thinking of taxes, of course; during the war years that was substantially higher than before the war, I presume, the gross earnings. The company was making more money?

A. Considerably less, I would say.

Q. Was it less?

A. Yes, because prior to the war we operated our own ships, and we obtained all the revenue from them, whereas during the war we were paid the usual commission, and the usual practice was give everything to the Government after certain expenses [29] were deducted.

Q. But your offices in this country were doing a great deal more work, perhaps, even though they were making less money?

(Deposition of Robert F. Suewer.)

A. They were doing more work, yes.

Q. Now, sometime in February, or, let us say, in early 1944, Mr. Pierson discussed the question of salaries again with you, didn't he?

A. It is quite possible; I could not say definitely.

Q. And he told you that in his opinion the salaries were below those being paid by other steamship companies in this area for substantially similar work. He told you that your scale was lower?

A. I don't know that he said it at that time.

Q. But at various times he did say that?

A. At various times he said so.

Q. At that time did he tell you that unless your salaries were increased your company would lose some of its key men?

A. He said that on several occasions.

Q. Did you understand by "key men" that he included himself?

A. I am sure he did not; he would have referred to himself if he meant himself.

Q. During this period from 1944, Mr. Pierson told you, did he not, that unless some arrangement would be made for the payment of a bonus or an increase in salary that he would have to look for other connections? [30] A. No, he did not.

Q. Is it that you don't remember such a statement, or that you have a positive memory that no such statement was made?

(Deposition of Robert F. Suewer.)

A. Yes; I am positive that no such statement was made.

Q. Nevertheless, during this period of time you told Mr. Pierson that after the war was over, or Manila freed, you would recommend to the board of directors of your company that a wartime bonus be paid to the key men in the San Francisco office?

A. I told him I would recommend it for the key men in all the offices.

Q. You would recommend it for the key men in all the offices, including the San Francisco office?

A. Yes.

Q. And by "key men" you included Mr. McManus and Mr. Middleton?

A. Well, I told him at that time that I would particularly include him along with the key men.

Q. Did you tell him at that time that you did not have the authority to grant the bonus without consulting the board of directors?

A. I told him that in my opinion I did not have such authority.

Q. That was the reason you gave to him for not then and there granting the bonus, that it was because you felt you did not have that authority?

A. That is correct.

Q. But you told him that you would recommend a bonus to the board [31] of directors?

A. That is correct.

Q. And you told him that you believed that the board of directors would follow your recommendation? A. Yes.

(Deposition of Robert F. Suewer.)

Q. Did you at that time personally know the board of directors of the company?

A. I knew the president.

Q. Was it a family company? A. Yes.

Q. Members of the family serving as the board of directors? A. Yes.

Q. But you had never met the other directors, themselves? A. No.

Q. Did you have any discussion with Mr. Pierson as to what the amount of bonus would be?

A. No.

Mr. Aldwell: That is, at any time?

Mr. Cook: Well, at this particular discussion.

Mr. Aldwell: You are talking now about the spring of 1944.

Mr. Cook: Yes, spring of 1944.

The Witness: A. No.

Mr. Cook: Q. Did this discussion with regard to a bonus follow up any statement by Mr. Pierson as to the lowness of the salary scale in the San Francisco office? [32] A. No.

Q. You stated on direct examination that you made the statement voluntarily to him. Could you explain that? Did you just go into his office and start talking to him about bonuses?

A. Well, Mr. Pierson was one of two people with whom I discussed it. One was a man in New York, and the other was Mr. Pierson, and I was out here on one of my usual visits, and I merely said to him that "When the war is over I am going

(Deposition of Robert F. Suewer.)

to recommend to the board of directors that we pay these additional bonuses.”

Q. Did you have a man in your New York office similar in position to Mr. Pierson out here; an East Coast Manager, shall we say?

A. Yes. Well, that is not the full answer. He was my assistant, and he was in charge of the New York office, and he also was superior to Mr. Pierson.

Q. What was his name? A. Griffin.

Q. Do you recall what salary he was paid during the war years?

A. I think between seven hundred fifty and eight hundred fifty dollars a month.

Q. You say he was superior to Pierson. Did Pierson report to him? A. Yes, he did.

Q. Was this Mr. Griffin granted a special bonus, too? A. Yes. [33]

Q. What was the amount of that?

A. It was \$26,500. I would have to look it up to be sure.

Mr. Aldwell: It is stipulated that he may show the true amount in the record here when he reads his deposition over.

Mr. Cook: That is correct.

Q. How many men did Mr. Griffin have under his direct control in the Eastern office?

Mr. Aldwell: At what time?

Mr. Cook: During the war period.

The Witness: A. Between 30 and 40.

(Deposition of Robert F. Suewer.)

Mr. Cook: Q. How many men did Mr. Pierson have under his supervision in both the San Francisco and Los Angeles offices and the Long Beach office during the war period?

A. I think it was probably somewhere around 35 people in the three offices.

Q. On what matters would Mr. Pierson have to seek the approval of Mr. Griffin in the organization?

A. On any matters that he might have to seek permission from me. In my absence Mr. Griffin would determine whether additional people should be taken on, whether any changes should be made in the offices; much of the ordinary office correspondence passed over Mr. Griffin's desk for answer, unless he could have one of his clerks answer it for him.

Q. Mr. Pierson has testified that if he wanted to hire an additional [34] man, shall we say, he would write you for approval; is that correct?

A. That is correct.

Q. And you would normally be the one to give him an approval or disapproval? A. Right.

Q. If you were not in New York at the office, why, then, Mr. Griffin would handle the matter for you? A. Yes.

Q. That is substantially the way the business was handled, if you were present in New York you would take care of Mr. Pierson's letters to you and if you were absent Mr. Griffin would do it?

A. Yes.

(Deposition of Robert F. Suewer.)

Mr. Aldwell: I think he already testified on certain matters that Mr. Griffin would take care of them.

The Witness: The ordinary business letters that Mr. Pierson would address to New York would be taken care of by Mr. Griffin, unless they went down in line and were taken care of by somebody else.

Mr. Cook: Q. What was Mr. Griffin's title? Did he have any?

A. Assistant to the United States Manager.

Q. On your way out to Manila, when you did go over there in February, 1946, did you talk to Mr. Pierson en route before you [35] left this country? A. Yes.

Q. You told him at that time, didn't you, that it was your purpose, one of your purposes, to consult the Board of Directors of the De La Rama Company and seek approval for wartime bonuses?

A. Yes.

Q. You told him at that time that you were recommending such bonuses to them?

A. I suppose so. I know I was going to speak to them about it. It would be a recommendation.

Q. Did you have any discussion at that time as to the amount that you would recommend?

A. No.

Q. Did you have any discussion as to the men whom you would recommend such bonuses for?

A. I am rather inclined to think I may have

(Deposition of Robert F. Suewer.)

told him I was going to ask for a bonus for McManus and Middleton and himself.

Q. When you got over to Manila, did you report to the board of directors in a formal meeting, or was it an informal situation?

A. Oh, I guess it would be considered a formal meeting; the directors were present.

Q. Sitting around a desk or table?

A. We were not in any office, because there were no offices, they were all blown up. We sat around a table and discussed [36] it.

Q. You reported the situation in the United States and the business during the war?

A. Yes.

Q. One of the items you brought up was the matter of a wartime bonus for these employees that we have mentioned, Pierson, McManus, Middleton and Griffin?

A. I did not refer to them by name to the directors. I told them that I wanted to give certain wartime bonuses to some key individuals in the United States.

Q. How many members were there on the board of directors? A. Seven.

Q. Were they all present at that time?

A. Yes.

Q. Was a record kept of the matters discussed at that meeting?

A. Yes, I suppose so. I don't know how complete it was kept, though. I have never seen the complete record of that.

(Deposition of Robert F. Suewer.)

Q. Can you tell me what date it was held on?

A. No, but I can find out for you.

Q. Well, the purpose of my question is that I want to see a copy of the record, the minutes of that particular meeting, and if it can be stipulated that when the date is ascertained I be given that so we can identify the meeting.

Mr. Aldwell: Just a moment.

(Discussion off record by direction of counsel.) [37]

Mr. Cook: Stipulated that the record kept of the meeting which we are discussing now will be furnished upon that request.

Mr. Aldwell: So stipulated.

Mr. Cook: Q. Well, coming back to this meeting, you asked authority to grant bonuses to key employees and that authority was given you by the board?

A. Actually, the board authorized the president to deal with these things. Whatever decision the president might make would, I suppose, be shown on a report.

Q. Did the board approve or ratify your actions taken during the war on the company's behalf?

A. I don't think it did it formally.

Q. Did they do it in any sort of manner or way?

A. Yes. They told me they were grateful for the way I had handled the affairs of the company.

(Deposition of Robert F. Suewer.)

Q. Did they approve of you having told Pierson, and Griffin, I assume, was also told, that request would be made to the board for the granting of substantial wartime bonuses?

A. I don't know that I put it to them exactly that way. I recommended that certain bonuses be granted, and they agreed.

Q. Did you tell the board that during the war you had told various members of your organization that you would ask for such approval after the war? Let me clarify that.

Did you bring it up to the board as though it were a new matter that had first come to your attention, or did you state [38] to them the matter had come up during the war and you stated you would then bring it up at the end?

A. I wonder if you would read that to me.

(The question was read by the reporter.)

A. I did not refer to it in either of those ways. I merely said in effect that I thought these men should be given a wartime bonus. Nobody questioned whether or not I had thought of it during the war or at the end of the war. It was extremely informal.

Q. And the board then gave the president authority to grant such bonuses as he determined upon, based on your recommendations?

A. They gave him authority, that in effect is it; they gave him authority if he saw fit to approve my request.

(Deposition of Robert F. Suewer.)

Q. Were you to set the amounts upon your return to the United States? A. Yes.

Q. On your way back through Los Angeles on your return to the United States you saw Mr. Pierson again, didn't you? A. Yes.

Q. At the Biltmore, I believe?

A. At the ship.

Q. What? A. At the ship.

Q. Oh, at the ship? A. Yes. [39]

Q. Did you tell him that you had gotten authority to set the bonus?

A. I probably did; I don't remember.

Q. Was there any discussion at that time as to the amount?

A. No. As a matter of fact, I don't recall any discussion on that subject. You see, we came in on this ship rather late at night, and we went to the Biltmore with a crowd, and I am quite certain we left the next day for New York.

Q. Then you don't remember whether or not you discussed the matter of bonus with Mr. Pierson on the occasion of your arrival at Los Angeles in March or April, 1946?

A. I don't remember, but I am inclined to think I did.

Q. At what time did you establish the amount of the bonus?

A. When I returned to New York.

Q. Did you communicate the names of those who were to receive bonuses and the amounts to the president of the company? A. Yes.

(Deposition of Robert F. Suewer.)

Q. By letter, or by cable?

A. I think both by cable and letter. I believe I cabled and then confirmed it by letter.

Q. Are copies of those documents in your New York files? A. Yes.

Mr. Cook: Will they be produced for us later on?

Mr. Aldwell: Yes.

Mr. Cook: Q. You don't remember them at this time? A. No. [40]

Q. Were the amounts recommended in those letters and cables the same as those ultimately given?

A. Yes, except in one instance, I think. No; I am quite certain they were the same. I will check that when I go back.

Q. A cable, No. 40, was sent to your company with regard to the payment of these bonuses. Do you recall what that cable contained?

A. No.

Q. For the record, that is the cable that is referred to on the check stub of the bonus check?

A. Then that must be the cable authorizing me to pay it.

Q. That document is also in your New York office? A. Yes.

Q. That can be produced on request?

A. Yes.

Q. The check stub also bears reference to a resolution by the board of directors, De La Rama

(Deposition of Robert F. Suewer.)

Steamship Co., Inc., on July 11, 1946; have you ever seen that resolution, or do you know what it contained?

A. Well, I must have seen it, and it certainly must refer to these bonuses.

Mr. Cook: We will also request that.

Mr. Aldwell: That is July 11, 1946.

Mr. Cook: July 11, 1946. It is on one of the letters, and the check stubs. [41]

Mr. Aldwell: Yes.

Mr. Cook: Q. The bonuses then paid were, roughly, as follows: Griffin, who was getting \$850 a month, or thereabouts, was given a salary adjustment amounting to \$26,500. You can check that figure. Pierson, who was then being paid \$750, got an equal bonus of \$2500 as Mr. Middleton, who was getting approximately \$600 and who got a bonus of \$2500, and Mr. McManus, who was then getting less than \$600, and who got \$2500 bonus?

A. That's right.

Q. At the time you recommended the \$2500 bonus for Mr. Pierson, you did not know that he was intending to leave your organization, did you?

A. No.

Q. You did not know whether he would stay or leave; you probably did not know anything about it; is that correct?

A. I don't believe I can remember that.

Q. One of the key employees, named McManus, had already left your company at the time the bonus was paid?

A. That is right.

(Deposition of Robert F. Suewer.)

Q. Did any question come up as to whether or not he should be paid the bonus in view of the fact he had already left the company?

A. No. It was for his wartime work.

Q. As a matter of fact, you received a letter from Mr. Bradford, did you not, urging you to make the payment, regardless of [42] the fact that McManus had already left?

A. It is quite possible.

Q. Such a letter would be in your New York files?

A. If there is such a letter, yes.

Q. Did you have any communication with the president of the company other than this one cable respecting the amount of the bonus? A. No.

Q. No telephone conversation? A. No.

Q. Or other letters? In setting the amount of the wartime bonus you said you took a figure of roughly \$500 per year in arriving at the total. Actually, that was for each year, that was slightly less than the normal bonus that was paid, consisting of one month's salary?

A. That's right. Well, it was not in each case, I don't believe, but in Mr. Pierson's case.

Q. Mr. Pierson's case, it was less than his normal bonus taking it on a yearly basis.

A. Yes, it was less than the month's bonus per year.

Q. Did you bring the bonus checks with you from New York when you came out last year?

(Deposition of Robert F. Suewer.)

A. Yes, I did.

Q. Did you deliver any of them personally?

A. No; I gave them to Mr. Bradford to deliver.

Q. You did not talk to Mr. Pierson about the bonus, did you? [43]

A. No, I did not.

Q. Did you get a letter from him asking to talk to you about it?

A. Yes.

Q. But you did not discuss the matter with him?

A. No.

Q. Is there any reason why you did not discuss it with him?

A. Yes; I did not think it was open to discussion.

Q. Why did you set Mr. Pierson's bonus at \$2500, whereas Mr. Griffin's was in the neighborhood of \$12,000?

A. Mr. Griffin was Mr. Pierson's superior, he had a far more important job, and he was a far more efficient employee; he was entitled to it.

Q. Why were Mr. Pierson's subordinates, Mr. Middleton and Mr. McManus, given the same bonus as Mr. Pierson?

A. Because I felt very strongly that Mr. McManus was doing a job in the San Francisco office which was superior to the job Mr. Pierson was doing. As a matter of fact, I felt that McManus was running the office and I always felt that Mr. Middleton was doing a superior job to Mr. Pierson, and, therefore, I felt they were entitled to just as much as Pierson, and he was not entitled to any more.

(Testimony of Robert F. Suewer.)

Q. Then you based your wartime bonuses, not on salaries which were being paid during the war-time, but upon your personal estimate of the merits of the individuals? [44] A. That is correct.

Mr. Cook: That is all I have at this time.

Redirect Examination

Mr. Aldwell: Q. What were Mr. Bradford's duties?

A. Well, he was in charge of the West Coast offices.

Q. In other words, he had more responsibility, did he, than Mr. Pierson?

A. Oh, yes; I gave him more responsibility. Perhaps that is a better way to put it.

Q. On your cross-examination Mr. Cook questioned you with regard to the relative amount of business before the war and during the war. How did the size of your offices compare, as far as the number of employees was concerned before the war and during the war, that is, after you got into this agency business for the War Shipping Administration?

A. The staffs were increased during the war.

Mr. Aldwell: I think that is all I have.

Recross Examination

Mr. Cook: Just one other question. In figuring out these bonuses, did you take into consideration the fact Mr. Pierson's salary during the war had been under what was being paid similar officers of other companies in San Francisco?

(Deposition of Robert F. Suewer.)

A. No. I judged the amount which he was to receive upon his own merits, if I make myself clear. [45]

Further Redirect Examination

Mr. Aldwell: Q. In this discussion in the spring of 1944 when you testified you volunteered to Mr. Pierson that at the end of the war you would recommend to the board of directors that a wartime bonus be granted, was that volunteering by you that you would recommend a bonus based on, or intended to be based upon salaries paid by other companies, or was it based on the merit of the particular employee?

A. Based on the merit of the particular employee.

Q. And that is what you had in mind, was it, at the time, or was it expressed that way to him?

A. Well, no, I wouldn't have expressed it to him that way.

Q. Well, that is what you had in mind?

A. I don't believe there was much discussion. I merely said that I was going to recommend that these men get a bonus.

Q. And that is all there was to it, is that right?

A. We did not talk about it a great deal.

Mr. Aldwell: All right; thank you.

Mr. Cook: Thank you.

State of California,
City and County of San Francisco—ss.

I certify that, in pursuance of stipulation of counsel, on Wednesday, July 30, 1947, before me, Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, State of California, at the offices of Messrs. Brobeck, Phleger & Harrison, Suite 1100, 111 Sutter Building, in the City and County of San Francisco, State of California, personally appeared Robert F. Suewer, a witness called on behalf of the defendants in the cause entitled in the caption hereof; and Robert G. Partridge, Esq., represented by Leo M. Cook, Jr., Esq. appeared as counsel for plaintiff; and Messrs. Brobeck, Phleger & Harrison, represented by Alan B. Aldwell, Esq., appeared as counsel for defendants; and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Kenneth G. Gagan, and thereafter reduced to typewriting; and I further certify that in pursuance of stipulation of counsel I forwarded the said deposition to the witness and it was signed by him without my presence and returned to me.

And I do further certify that I have retained the said [47] deposition in my possession for the purpose of mailing the same with my own hands

It Is Hereby Further Stipulated that the deposition of said witness when written up may be read in evidence at the trial by said defendant without further proof that the witness is at a greater distance than 100 miles from the place of trial.

Dated July 30, 1947.

/s/ BROBECK, PHLEGER &
HARRISON,

/s/ HERMAN PHLEGER,

/s/ ALAN B. ALDWELL,

Attorneys for Defendant, The De La Rama Steamship Co., Inc.

/s/ ROBERT C. PARTRIDGE,

/s/ LEO M. COOK,

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 30, 1947.

[Title of District Court and Cause.]

DEPOSITION OF H. H. PIERSON

Be It Remembered, that on Tuesday, July 29, 1947, pursuant to stipulation of counsel, at the offices of Messrs. Brobeck, Phleger & Harrison, Suite 1100, 111 Sutter Building, in the City and County of San Francisco, State of California, personally appeared before me, Eugene Jones, Esq., a Notary Public in and for the City and County of San Francisco, State of California, authorized to administer oaths, etc.,

H. H. PIERSON

the plaintiff herein, called as a witness on behalf of the Defendants.

Robert Partridge, represented by Leo M. Cook, Jr., Esq., appeared as counsel for plaintiff; and

Messrs. Brobeck, Phleger & Harrison, represented by Alan B. Aldwell, Esq., appeared as counsel for defendants; and the said witness, having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

It is hereby stipulated and agreed by and between the counsel for the respective parties that the deposition of the above named witness may be taken on behalf of the defendants at the offices of Messrs. Brobeck, Phleger & Harrison, Suite 1100, 111 Sutter Building, in the City and County of San Francisco, State of California, on Tuesday, July 29, 1947, before Eugene Jones, a notary public in and for the City and County of San Francisco, State of California, and in shorthand by Fred J. Sherry.

It is further stipulated and agreed by and between the counsel for the respective parties that the deposition, when transcribed into longhand typewriting, may be read into evidence by either party on the trial of the said cause; that all objections as to the notice of the time and place of taking the same are waived, and that all objections

(Deposition of H. H. Pierson.)

as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality, relevancy and competency of the testimony are reserved to all parties for the time of trial.

It is further stipulated by and between counsel for the respective parties that the reading over of the testimony to or by the said witness and the signing thereof are expressly waived.

Mr. Aldwell: May we have the stipulation that the Notary can be excused?

Mr. Cook: Yes.

Mr. Aldwell: And also it is stipulated that all objections as to the sufficiency of the notice and so forth are waived?

Mr. Cook: Yes, with all the usual stipulations.

Mr. Aldwell: Yes.

Examination by Mr. Aldwell

Mr. Aldwell: Q. Mr. Pierson, will you state your full name and address, please?

A. My home address you want?

Q. Yes, and your business address.

A. Herman H. Pierson, 26 Elm Street, Larkspur.

Q. What is your business address?

A. My business address is 214 Front Street, San Francisco, care of the States Steamship Company.

Q. That is the States Steamship Company?

A. Yes, S-t-a-t-e-s Steamship Company.

Q. You are the plaintiff in this action?

(Deposition of H. H. Pierson.)

A. Yes.

Q. What is your present business connection, or in what capacity are you?

A. I am traffic manager.

Q. You are traffic manager of the States Steamship Company? A. Of San Francisco.

Q. Does that just cover San Francisco or any other area?

A. No, it would cover San Francisco. The main office is in Vancouver, Washington.

Q. What are your present duties in that connection, Mr. Pierson?

A. Operating the steamers, getting freight, etc., the usual procedure of a traffic manager's position.

Q. Are you in complete charge of the San Francisco office of that company?

A. No, they have a district manager in charge of the office.

Q. Now, you were formerly employed by the defendant, the De La Rama Steamship Co., Inc., in this particular action? A. Yes.

Q. When were you employed by that company?

A. It was July 1, 1940.

Q. Would you state the circumstances under which you were employed at that time, that is, who employed you and who made the negotiations?

A. I can give you the background. We formed a corporation called the De La Rama Steamship Agencies in February of 1939 and we had the California agency of the De La Rama Steamship

(Deposition of H. H. Pierson.)

Company which operated until June 30, 1940, when the De La Rama Steamship Company bought out the agency and took us in their employ—took me in their employ.

Q. When you say “we”, whom do you mean?

A. When I say “we”, I mean they took over the whole organization, but that is not involved.

Q. But you say you formed a corporation.

A. I mean myself and associates formed a company.

Q. I see. So that in June of 1940 the present defendant in this action took over—

A. On July 1, 1940 it took over and bought out the old corporation, yes.

Q. Was anybody else besides yourself taken over by this organization?

A. All of the employees from the agency were taken over.

Q. When that occurred, whom did you deal with in connection with your employment?

A. A Mr. Piravno, the president of the De La Rama, and Mr. Suewer, the United States manager.

Q. At that time did you have any discussion with Mr. Piravno as to the terms of your employment? A. Do you mean as to salary?

Q. I mean as to salary and length of employment and so forth.

A. The whole company was taken over into their branch office, continued employment and all

(Deposition of H. H. Pierson.)

the salaries were discussed at that time as to what they would pay anybody.

Q. With particular reference to yourself, what discussion, if any, was had as to the matter of salary?

A. My monthly salary was discussed at the time and agreed to.

Q. What was that? A. \$600.

Q. That is the same as you had been receiving?

A. No, that was more than I had been receiving.

Q. Was your capacity with the present defendant the same capacity as that which you had had under the previous arrangement?

A. I was president of the agency, but I was Pacific Coast manager when I went with the corporation.

Q. So that commencing July 1, 1940 you were Pacific Coast manager for the De La Rama Steamship Co.?
A. Yes.

Q. And you continued in that capacity, did you, until you severed your connection with the defendant?

A. Well, there was a break in between. In March, I would say, of 1941, a Mr. Bradford came over from Manila and took charge of the Pacific Coast office as the No. 2 man of the De La Rama Steamship Co., United States, and he continued in that capacity until February of 1942 when he went in the war and then I took over as Pacific

(Deposition of H. H. Pierson.)

Coast manager; I mean, carried on from then on as Pacific Coast manager.

Q. What was your position between March 1941 and—

A. Pacific Coast manager—still carried out the same title.

Q. I see. When did you leave the employ of the defendant? A. August of 1946.

Q. Do you remember the date?

A. There are 31 days in August, so it was the 31st day of August.

Q. Would you state under what circumstances you left the employ of the defendant?

A. I was made another offer by a firm and accepted.

Q. Going back to your original employment of July 1, 1940, you made your arrangements for employment with Mr. Piravno, is that correct?

A. Yes.

Q. At \$600 per month as Pacific Coast manager? A. Yes.

Q. Subsequent to that time, did you have any further discussions as to terms of employment with Mr. Piravno?

A. In just what respect do you mean—length of time?

Q. Particularly with regard to salary.

A. No, that question didn't arise. At the time the war came on, he was caught in Manila so there was no opportunity to talk to him. From then on

(Deposition of H. H. Pierson.)

Mr. Suewer took charge of the company, the United States.

Q. So that after the commencement of the war there was no further contact with the people in the Philippines? A. That's correct.

Q. That is, after such time as the Japanese took control and communications were severed?

A. That's right.

Q. And so from that time your dealings would be with Mr. Suewer, is that correct?

A. That is correct.

Q. Approximately what date would you say that was?

A. At the time the war started we were getting some cables through, but I would say it was late December of 1941 when we could not get through any more to Manila.

Q. Between July 1, 1940 and the time that the communications were severed with Manila, was there any change in your salary? A. No.

Q. When did you receive an adjustment in salary for the first time?

A. I think it was 1942. I have a record if you want the actual date of it.

Q. I would like to have it.

A. It was October 1, 1943.

Q. What happened at that time?

A. Increased to \$708.33.

Q. Per month? A. Yes.

(Deposition of H. H. Pierson.)

Q. Under what circumstances was that raise in salary negotiated?

A. You mean how I obtained the increase?

Q. Yes.

A. I approached Suewer on the basis of increasing all salaries, including my own, because our pay situation was way below, and he authorized me to make certain adjustments in salary and I had to make out the forms and apply to various departments of the government to obtain the authority.

Q. Now, you did that after discussing it with Mr. Suewer, is that correct? A. Yes, sir.

Q. Where did that discussion take place?

A. In San Francisco.

Q. He authorized a raise in your pay to \$708.33 per month?

A. Yes; that is, in other words, from \$7200 to \$8580.

Q. Did you have any more discussions with Mr. Suewer with regard to salary adjustment other than this period in October of 1943 and until the discussion as alleged in your complaint, February of 1944?

A. Yes, we had another discussion in which we got increased salaries again in 1945, in May.

Q. But there was nothing between October of 1943 and February of 1944?

A. No, not that I recall.

Q. Now, you allege in your complaint that in

(Deposition of H. H. Pierson.)

February of 1944 you had a discussion concerning all salaries with Mr. Suewer, is that correct?

A. Yes.

Q. What date in February of 1944 would that be?

A. I couldn't tell you the exact date. He was out on a trip from New York that month and we were discussing salaries in general, my own included, on the basis of the bonus and in comparison with other steamship salaries that were being paid.

Q. Will you state the substance of those discussions you had with Mr. Suewer in February of 1944?

A. He admitted our scale was under steamship companies, and something would have to be done about it. Otherwise we were going to make some moves to get some better positions and he realized at the time it was very difficult to get approvals from the various government bodies and he decided that something would have to be done later in the form of taking care of them in some way after the war was over or when the shooting stopped anyway, so they could contact the home office. In the discussion I told him that some of our boys were going to move out unless they would get something in the form of increased salaries, in taking care of, especially, the higherups in the operating end of it, including myself. He figured at the time that adjustment could be made to take

(Deposition of H. H. Pierson.)

care of everybody that would come in that category. So we carried on.

Q. Did he at that time make any statement as to his authority to grant salary increases?

A. He had the authority to grant certain increases in salary and pay us the way he did, authorizing us to get increases. He had that authority but he said he didn't have any authority to grant any bonuses at that time.

Q. What was finally agreed between you as to bonus?

A. He had to take it up with the home office when Manila was liberated and the home office was in operation.

Q. What discussion was had at that time as to the amount of the bonus?

A. There was no actual amount mentioned on it other than what would be considered a fair bonus for the top men that had carried on through the war period at a low salary. There was no actual amount stipulated to.

Q. So he therefore agreed at that time to take the matter up with the people in Manila after Manila was liberated?

A. That's right. Well, he felt or he asserted that he knew that if he recommended certain increases or bonuses for the boys at work during the war period, he felt positive they would be granted.

Q. But there was no fixing of any amount?

A. No stipulation as to the amount at all and we trusted the boy.

(Deposition of H. H. Pierson.)

Q. At that time Mr. Suewer was the only officer of the corporation in the United States?

A. That's right; he had the full power of attorney that had been cabled over. Well, it was at the Philippine National Bank, New York at the time the Japs started the little blow-off, giving him full authority to operate the company and everything.

Q. After this discussion in February of 1944, did you have further discussion with Mr. Suewer regarding your salary?

A. I don't recall just when, but I know I brought the subject up on his different visits to San Francisco from New York, and in 1945 he granted authority to ask for additional increases for different employees in the office.

Q. Including yourself?

A. Including myself.

Q. What form did that take?

A. What do you mean?

Q. The amounts, and so forth.

A. I don't know about the other employees but I was raised \$500 for a year, which made my salary \$750 a month.

Q. About what time in 1945 was that?

A. May 1 was when it was granted. We got approval from the Treasury Department.

Q. Did you have any further discussions on the subject of salary or bonus after that date?

A. The discussion we had was in 1946, Febru-

(Deposition of H. H. Pierson.)

ary, when he was on his way to Manila and he promised at that time he would take up the question on the lines that he had promised to, and on his arrival back from Manila in March of 1946 at the Biltmore Hotel, I discussed it with him.

Q. That was the Biltmore Hotel in Los Angeles?

A. Yes, and he said he had discussed it out there with the officials and that they had approved the plan of paying a bonus to the men that were entitled to a bonus and that he was to work out the ones that were to receive bonuses and the amounts and submit them to Manila for approval.

Q. Did you at that time or at any other time thereafter discuss with him the amount of the bonus he should recommend for you?

A. I never discussed the amount because the way he always expressed it was that it would be a justifiable amount for the services performed.

Q. Then what happened after that particular meeting in March of 1946? What was the next development in so far as the payment of salary and bonus were concerned?

A. It was then I had made my decision to leave the firm. The actual date of leaving the firm was not known because at the time De La Rama had the agency of the States Steamship Company and I was to leave the firm when they could find offices and take over their own business. So I stayed with them until that time, which was the end of August,

(Deposition of H. H. Pierson.)

but I think it was in July of 1946 that Mr. Bradford came in on a Monday morning and waved a check at me. He gave me a bonus check and then I wrote Mr. Suewer a letter up at the Grove and told him I would appreciate it very much if he would give me the time on Sunday night when he was coming down to discuss the thing, but he avoided the thing and told Mr. Bradford who came into the office Monday after putting him on the plane for New York, that if I wanted to discuss the bonus I could write him a letter.

Q. Did you write him any such letter?

A. No, I should write.

Q. What did you do after that?

A. I went and talked to my attorney and asked him what to do with the check.

Q. What did he tell you to do?

Mr. Cook: You need not answer that question.

Mr. Aldwell: All right.

Q. As a matter of fact, as a result of your conversation with Mr. Partridge, your attorney, he wrote a letter to Mr. Suewer, did he not?

A. That's right.

Q. As a further result of that, De La Rama attorneys in New York replied to Mr. Partridge's letter?

A. I think he did, yes.

Q. Did Mr. Partridge ever show you the letter from Messrs Haight and Griffin?

A. I believe they sent me a copy.

Q. Do you recall the date on which you received that check?

(Deposition of H. H. Pierson.)

A. I couldn't tell you the actual date other than it was in the month of July, because he was up at the Bohemian Grove when they were having the Jinx up there.

Q. Mr. Bradford handed the check to you?

A. Yes.

Q. When did he return to the organization?

A. He returned on the 2nd of January 1946.

Q. In what capacity?

A. As No. 2 man, as he was before.

Q. In the United States? A. Yes.

Q. And your relationship was the same as it was before? A. Yes.

Q. And by that I mean it was the same as it was during the previous period before the war?

A. Yes.

Q. Did you have any discussion with Mr. Bradford when he handed you the check, or at any other time as to what the check represented?

A. No, sir.

Q. He just handed the check to you, is that correct? A. Yes.

Q. And as you already stated, you asked him to get in touch with Mr. Suewer?

A. I gave him a letter to give to Mr. Suewer. He was going up to the Grove.

Q. And that was the letter requesting Mr. Suewer to meet you on Sunday night?

A. That's right.

Q. And he was going to leave on Monday morning for New York? A. That's right.

Q. That was all there was in that letter?

(Deposition of H. H. Pierson.)

A. That is all there was in that letter.

Q. What did you do with the check when you got it?

A. I held on to it until I consulted my attorney.

Q. Then after that what did you do?

A. On his authority I deposited it.

Q. Do you recall whether you deposited it right after you talked to Mr. Partridge?

A. I don't just exactly know whether it was the same day or not.

Mr. Cook: The original check would be the best evidence. I imagine you have that.

The Witness: I don't know what day I put it in the bank. The day I consulted Partridge, why, I talked to Bob about it, but I think he studied it over for a while, if I remember correctly, and called me in a couple of days later and we had a further discussion and he told me I could deposit the check and he wrote a letter. I think that's the way it was.

Mr. Aldwell: Q. Let me ask you this, and this will accomplish my purpose: Did you deposit the check in your account before you saw the copy of the letter in reply from Messrs. Haight & Griffin?

A. Oh, yes.

Q. That is all I wanted to know. Would you give us a brief discussion of your duties as Pacific Coast manager for De La Rama during this period of time?

A. The duties at the time— As I say, the Pacific Coast manager is to look after the operation of the Los Angeles and San Francisco offices and take

(Deposition of H. H. Pierson.)

full charge of all the operations of all of our vessels plus vessels belonging to the United States over which De La Rama was the general agent. Also as the agent for the States Steamship Company in handling their business operations at both Los Angeles and San Francisco.

Q. How many people did you have in the office here in San Francisco that you supervised, approximately?

A. I think I had about 22 in San Francisco and there was, let's see, about 10 in Los Angeles and Long Beach.

Q. And they were all under your supervision, is that correct? A. Yes, sir.

Q. Your capacity as Pacific Coast manager, you were, of course, under Mr. Suewer's directions?

A. Correct.

Q. He being the vice president in New York?

A. That's right.

Q. In that capacity how much discretion did you have with regard to, I will say, hiring and firing employees out here?

A. I had full authority.

Q. You didn't have to consult New York at all?

A. No. If I was going to hire anybody or increase the staff and needed somebody, I would talk it over with him over the phone.

Q. But I mean so far as any replacements were concerned.

A. Oh, no, not as far as any replacements were concerned, except I would just state that So-and-

(Deposition of H. H. Pierson.)

so resigned and So-and-so was hired, and get the necessary bonds and regular routine you have to go through and then notify them of the facts.

Q. Going back to this discussion with Mr. Suewer in February of 1944, where did this conversation take place? In the office here?

A. Yes.

Q. Was there anybody else present?

A. No, just the two of us.

Q. Was there any memorandum made of that discussion by either party so far as you know?

A. I did not—I don't know whether he did or not.

Q. I say so far as you know. A. No.

Q. Was there any statement made by either Mr. Bradford or by Mr. Suewer or by anybody for that matter, when you received this check for \$2500 less taxes, that that was to be considered full payment as a bonus?

A. There was not even a word said. He just waved it like that with glee. He thought he was doing something wonderful for me. I don't think my expression can really express it.

Q. When you had this discussion with Mr. Suewer in February of 1944, did you say anything to him at that time about resigning?

A. I told him that we were going to lose some of our boys if we didn't get something, that we would all be looking for new jobs.

Q. How about yourself personally?

A. Including myself.

(Deposition of H. H. Pierson.)

Q. Did you actually threaten to resign at that time unless you got some commitment?

A. I told him we would have to make some other arrangements if we didn't get some commitment.

Q. When you had concluded this discussion with Mr. Suewer at that time, did you feel that you had a binding contract with the corporation?

Mr. Cook: Pardon me, but you need not answer that question. That calls for a legal conclusion.

Mr. Aldwell: I think that should be reserved for later.

Mr. Cook: It is a matter of form. That is up to the judge anyway.

Mr. Aldwell: That is what I say, but he ought to answer it at any rate so we can put it up to the judge. However, I am willing to let it go.

Q. Had you been receiving many offers from other steamship companies around February of 1944?

A. I was not receiving any offers. I had discussions with other steamship people, new firms coming out opening offices that approached me about whether I was satisfied, and so forth. They were looking for men.

Q. Did you ever get to the point where you had any discussion as to possible salary if you went with those companies?

A. I never got that far along in a conversation.

Q. When were communications restored with the Philippines?

A. I imagine it was—This is only a guess on my part. I haven't the actual date, but I imagine

(Deposition of H. H. Pierson.)

it was in March of 1945—somewhere around that time.

Q. From that time on it was possible to get instructions as to the management of the company from the head office in Manila?

A. Yes, when they got Manila organized.

Q. Now, you allege in your complaint that the salary being paid to you, "in or about February of 1944 was less than the reasonable value of your services and less than the salary paid to other persons holding comparable positions and performing comparable duties with other and similar steamship companies," is that correct? A. Yes.

Q. Upon what do you base that allegation?

A. On knowing about salaries that other people enjoyed in a similar capacity?

Q. What were those salaries?

A. I would say a minimum of \$1000 a month, and some higher, naturally.

Q. Can you state any particular company that would be true of, that was comparable?

A. Yes, I would imagine that the Steamship Department of Balfour Guthrie would be comparable. I would imagine that the same would be true of Fred Olson Line, for their Pacific Coast manager. And there are many others.

Q. Do you know for a fact what salaries the Pacific Coast managers of those two particular concerns were getting?

A. I am not positive of their salaries, no; but I am positive they were higher than \$1000 a month.

Q. Do you know what if any arrangements their

(Deposition of H. H. Pierson.)

Pacific Coast managers might have had with their companies as to bonuses and so forth at the end of the war, if any?

A. No, I couldn't say as to that.

Q. When the actual fighting stopped in August of 1945 did you discuss this matter of bonus with Mr. Suewer at any time between then and this time in February of 1946 when he was on his way to Manila?

A. Yes, on the different times when he was out here it was discussed.

Q. What was the general subject of the discussion?

A. He said he had the similar thought that as he assured me before it would be taken care of as soon as Manila was opened up again.

Q. There was no discussion of amounts or anything? A. No.

Q. Did you make any approaches to any other steamship companies with regard to employment, say, from the fall of 1943, on?

A. I was approached, but I didn't approach.

Mr. Aldwell: I think that is all I have.

Mr. Cook: No questions.

State of California,

City and County of San Francisco—ss.

I, Eugene Jones, a notary public in and for the City and County of San Francisco, State of California, hereby certify that, pursuant to stipulation of counsel, the witness in the foregoing deposition named, H. H. Pierson, was by me duly sworn

to testify the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that said deposition was reported in shorthand by Fred J. Sherry, a competent shorthand reporter and disinterested person, and was transcribed by him into longhand typewriting; and that the reading and subscribing of the said deposition by the witness was duly waived by the attorneys for the respective parties.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In witness whereof, I have hereunto set my hand and affixed my official seal this 12th day of August, 1947.

(Seal) /s/ EUGENE P. JONES,
Notary Public, in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Oct. 30, 1947.

[Endorsed]: No. 12050. United States Court of Appeals for the Ninth Circuit. The De La Rama Steamship Co., Inc., a corporation, Appellant, vs. H. H. Pierson, Appellee. Transcript of Record. Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed September 28, 1948.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12050

H. H. PIERSON,

Plaintiff and Appellee,

vs.

De La RAMA STEAMSHIP CO., INC., a corpo-
ration, FIRST DOE, SECOND DOE, THIRD
DOE,

Defendants;

THE DE LA LAMA STEAMSHIP CO., INC.,
Defendant and Appellant.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY
ON APPEAL

The De La Rama Steamship Co., Inc., Appel-
lant herein, designates the following points upon
which it intends to rely on the appeal in the above
entitled cause:

1. The District Court erred in finding that at
all of the times mentioned in the Findings of Fact
and Conclusions of Law, R. F. Suewer "was acting
within the course and scope of his authority" as
United States General Manager of defendant The
De La Rama Steamship Co., Inc. (Finding No. 4.)

2. The District Court erred in finding that at
all of the times mentioned in the Findings of Fact
and Conclusions of Law, "R. F. Suewer as United
States Manager for said defendant had authority

to hire and discharge employees, including the plaintiff." (Finding No. 4.)

3. The District Court erred in finding that R. F. Suewer "represented, stated and promised to plaintiff that at the conclusion of the war the said Suewer would recommend to the Board of Directors that such additional sum of money or bonus be paid to plaintiff by defendant, which together with the salary and bonuses received by plaintiff during the war would equal the reasonable value of the services performed by plaintiff for defendant during the period of warfare." (Finding No. 4.)

4. The District Court erred in finding that "it is true that in the course of the conversation referred to, defendant corporation entered into an agreement with plaintiff in February of 1944, whereby plaintiff was hired by defendant from said time to the termination of the war, and that under and by virtue of the terms of the agreement of hiring, the total salary or compensation to be paid by defendant to plaintiff for his services from December 7, 1941 to August 14, 1945, the period during which actual warfare continued, was the reasonable value of plaintiff's services during such war period. Such additional compensation, salary or bonus, as together with the salary and bonuses received by plaintiff during the war would equal the reasonable value of the services performed by plaintiff for defendant during the period of warfare was payable by defendant to plaintiff within a reasonable time after the termination of the war." (Finding No. 5.)

5. The District Court erred in finding that "Plaintiff continued in his position as Pacific Coast Manager for defendant until after August 14, 1945, believing and relying upon the promises, representations and statements made to him by defendant corporation through the said Suewer and pursuant to the contract of hiring entered into as hereinbefore found, and defendant accepted and retained the benefit of the services of said plaintiff rendered on its behalf." (Finding No. 6.)

6. The District Court erred in finding that "the reasonable value of the services performed by plaintiff for defendant during the period from December 7, 1941 to August 14, 1945 . . . was and is the sum of \$44,250.00" and that "there is now due, owing and unpaid by defendant to plaintiff as and for the balance due him for the reasonable value of his services during said period the sum of \$9,650.00." (Finding No. 7.)

7. The District Court erred in finding that the sum of \$2,500.00, together with the salary and bonuses he had received during the period of warfare . . . was less than the reasonable value of plaintiff's services for defendant during said period; the said Suewer did not recommend to the Board of Directors of said Defendant that a bonus be paid by defendant to plaintiff which, together with the bonus, compensation and salary received by plaintiff from defendant during the period of actual warfare . . . would equal the reasonable value of the services rendered by plaintiff to the defendant." (Finding No. 8.)

8. The District Court erred in finding that the "defendant became indebted to plaintiff in the sum of \$9,650.00." (Finding No. 9.)

9. The District Court erred in finding that "no approval . . . from the Salary Stabilization Unit of the Treasury Department . . . was necessary or required for the payment of the additional compensation due plaintiff . . ." (Finding No. 11.)

10. The District Court erred in finding that "The additional compensation promised and agreed to be paid to plaintiff by defendant was payable under the terms of said contract of hiring only after and upon the termination of wage and salary controls during the period of warfare, as established and prescribed by the Act of Congress known as the Stabilization Act of 1942 (50 U.S.C. App. Sec. 961-7) and the regulations lawfully promulgated thereunder by the Economic Stabilization Director and the Commissioner of Internal Revenue of the Treasury Department of the United States, and said Act and the regulations thereunder did not and do not prohibit the payment of said additional compensation to plaintiff." (Finding No 11.)

11. The District Court erred in vacating and setting aside the judgment theretofore rendered in favor of defendant on February 14, 1948.

12. The District Court erred in concluding that said judgment was "against and contrary to the law and the evidence." (Conclusion No. 2.)

13. The District Court erred in concluding that "defendant is indebted to plaintiff for the reasonable value of services rendered upon a contract

of hiring in the sum of \$9,650.00.” (Conclusion No. 3.)

14. The District Court erred in concluding that “plaintiff is entitled to judgment against defendant in the sum of \$9,650.00.” (Conclusion No. 4.)

15. The District Court erred in not finding and concluding that there was no liability, either contractual or otherwise, on the part of defendant to pay plaintiff any sum whatsoever as a bonus.

16. The District Court erred in not finding and concluding that in the event there was a contract on the part of the defendant to pay plaintiff additional compensation, it was fully performed by the payment by defendant of \$2,500.00 on July 15, 1946.

17. The District Court erred in not concluding that in the event there was a contract on the part of defendant to pay plaintiff additional compensation, it was illegal and void under the Stabilization Act of 1942 and the regulations promulgated thereunder.

18. The District Court erred in failing to enter judgment for the defendant herein.

Dated: September 28, 1948.

/s/ HERMAN PHLEGER,
/s/ MAURICE E. HARRISON,
/s/ ALAN B. ALDWELL,
/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for Appellant The De La Rama Steamship Co., Inc.

[Endorsed]: Filed September 28, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION DESIGNATING PORTIONS
OF RECORD ON APPEAL TO BE IN-
CLUDED IN PRINTED RECORD ON AP-
PEAL

It Is Hereby Stipulated and Agreed that the en-
tire record on appeal as transmitted by the Dis-
trict Court shall be included in the printed record
on appeal in the above entitled cause, together with
appellant's Statement of Points Upon Which Ap-
pellant Intends to Rely on Appeal and this Stipu-
lation.

Dated September 28, 1948.

/s/ HERMAN PHLEGER,
/s/ MAURICE E. HARRISON,
/s/ ALAN B. ALDWELL,
/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for Defendant and Appellant, The De
La Steamship Co., Inc.

/s/ ROBERT G. PARTRIDGE,
Attorney for Plaintiff and Appellee.

[Endorsed]: Filed September 28, 1948. Paul P.
O'Brien, Clerk.

